

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION 4

PHILIP CHRUDIMSKY,)	Court of Appeal No.:
)	B287035
Plaintiff and Appellant,)	
)	Superior Court No.:
v.)	VC064045
)	
WILLIAM CHRUDIMSKY, JR.)	
)	
Defendant and Respondent.)	
)	
)	
)	

Appeal from Los Angeles County Superior Court
Case No.: VC064045
Honorable Mary Thornton House

RESPONDENT'S BRIEF

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APPELLANT/ PHILIP CHRUDIMSKY PETITIONER: RESPONDENT/WILLIAM CHRUDIMSKY, JR. REAL PARTY IN INTEREST:	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS	
(Check one): <input checked="" type="checkbox"/> INITIAL CERTIFICATE <input type="checkbox"/> SUPPLEMENTAL CERTIFICATE	
Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.	

1. This form is being submitted on behalf of the following party (name): RESPONDENT, WILLIAM CHRUDIMSKY, JR.
2. a. There are no interested entities or persons that must be listed in this certificate under rule 8.208.
- b. Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (Explain):
(1) PHILIP CHRUDIMSKY, an individual	Plaintiff and Appellant
(2) WILLIAM CHRUDIMSKY, an individual	Defendant and Respondent
(3)	
(4)	
(5)	

Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: 4/15/2019

JOSEPH A. WALKER, ESQ.
(TYPE OR PRINT NAME)



 (SIGNATURE OF APPELLANT OR ATTORNEY)

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INTRODUCTION

This is a one-issue appeal. Appellant filed this action in a general trial court department and not in a probate department. Two general trial court departments ruled this matter should be tried in the Los Angeles County Superior Court Probate Court.

Appellant filed objections prior to both rulings, seeking to keep this matter out of probate court. Appellant did not prevail and the case was tried in the probate court. There is no appeal from any activities or findings made in the probate court proceeding. The sole issue on appeal is whether or not the two general trial courts correctly ruled that the case should be tried in a probate court.

Appellant argues that he was denied due process because he was denied a jury trial in probate court. (PC §17006)¹ Respondent submits otherwise. Appellant presented to the general trial court a Verified Complaint. (CT 16) In it he alleged numerous issues concerning the internal affairs of a trust for which he makes allegations of trustee malfeasance. Every malfeasance claim is couched in terms of a trust activity performed by a trustee. Of course, given the set of facts set forth in the Complaint, a cause of action or two might have been crafted without a discussion of the

¹ PC shall hereafter refer to the Probate Code

improper acts of the trustee. But, that is not how the Complaint was drafted. It was drafted almost perfectly to fit within California Probate Code, Division 9, Part 5 (Judicial Proceedings Concerning Trusts). Thus, since he verified the Complaint, Appellant cannot now claim that he was denied a jury trial for the resolution of facts concerning the internal affairs of a trust.

STATEMENT OF THE CASE

In Appellant's Opening Brief, at the "Statement of the Case" section, the case history is correctly set forth. (AOB 8-9) It does not need repeating.

STATEMENT OF APPEALABILITY

This appeal is from the Judgment of the Los Angeles County Superior Court and is authorized by the Code of Civil Procedure §904.1(a)(10).

RESPONDENT'S STATEMENT OF FACTS

In the Opening Brief, Appellant gives a cursory review of the complaint that was at issue for the motions. (AOB 10) Respondent believes a more detailed look is necessary for this appeal.

The Complaint has four Causes of Action. (CT 5-16) Paragraphs 5 to 15 of the Complaint form the general allegations. (CT 2-4) At paragraph 5 of the Complaint, it states:

PHILIP CHRUDIMSKY and WILLIAM CHRUDIMSKY are brothers. PHILIP CHRUDIMSKY and WILLIAM CHRUDIMSKY are each beneficiaries of the JOSEPHINE CHRUDIMSKY TRUST, which is a living trust created in or about 2004 by their mother, Josephine Chrudimsky, while she was alive.

At paragraph 10 of the Complaint, first sentence, it states:

Prior to the death of Josephine Chrudimsky, there were numerous ostensible transfers or attempted transfers of real and personal property which, upon information and belief, are not valid transfers.

At paragraph 13 of the Complaint, it states:

PHILIP CHRUDIMSKY seeks a fair and even distribution of all of the trust assets, as according to the intentions of Josephine Chrudimsky, as identified in the TRUST. This also includes an identification and distribution of Josephine Chrudimsky's personal property, a fair division of photos, memorabilia, as well as real property.

At paragraph 15 of the Complaint, it states:

Plaintiff is entitled to an accounting and demands that an accounting be made of the corpus of the TRUST and where the property and funds have gone to.

The First Cause of Action is entitled "Breach of Fiduciary Duty against WILLIAM CHRUDIMSKY". (CT 4) This is the Cause of Action for which Appellant is alleging he was denied a jury trial. At paragraph 17 of the Complaint, Appellant alleges that Respondent owed a fiduciary duty to Appellant under Probate Code §§ 11000, 16002, 16003 and 16061.7(a).

At paragraph 18, the Complaint states:

Plaintiff has the duty to supervise and ensure that his co-trustee is properly executing his duties [Probate Code §16013]. However, WILLIAM CHRUDIMSKY has taken efforts to lock out Plaintiff from participation in being a co-trustee of the TRUST. Plaintiff has sought to participate, but WILLIAM CHRUDIMSKY has prevented all participation by Plaintiff and has essentially usurped complete control of the TRUST. As such, WILLIAM CHRUDIMSKY is in breach of his duties as a co-trustee.

At paragraph 21 of the Complaint, the first two sentences state:

Upon information and belief, WILLIAM CHRUDIMSKY has acted in his own self interest by transferring title to the Luxor Property in his own name. Upon information and belief, until January 4, 2013, Josephine Chrudimsky's intention was to leave the property in the TRUST, . . .

At paragraph 27, the Complaint states:

As a direct and proximate result of WILLIAM CHRUDIMSKY'S breach of fiduciary duty, Plaintiff has been harmed as alleged herein and has suffered general and special damages. The amount of the damages is not yet known, but will be shown with particularity according to proof at the time of trial.

The Second Cause of Action is for an "Accounting against WILLIAM CHRUDIMSKY". (CT 6) At paragraph 29 of the Complaint, it states:

As co-Trustee, WILLIAM CHRUDIMSKY owed to Plaintiff the fiduciary duty to Account for the assets of the TRUST.

An accounting cause of action, whether asserted inside a probate court trust litigation or in a general civil litigation is a cause of action in equity, for which there is no right to a jury trial. *DeGuere v. Universal* (1997) 56 Cal.App.4th 482.

The Third Cause of Action is for “Quiet Title against WILLIAM CHRUDIMSKY”. (CT 7) At paragraph 37 of the Complaint it states:

WILLIAM CHRUDIMSKY asserts an interest in title to the Luxor Property by means of a recorded Quitclaim Deed recorded on or about October 17, 2012 in the Los Angeles County Recorder’s Office instrument number 20121569836. The purported Quitclaim Deed recorded on or about October 17, 2012 and all documents associated with the October 27, 2012 transfer are illegal. The claims of WILLIAM CHRUDIMSKY are without any right and WILLIAM CHRUDIMSKY has no right, title, stake, lien, or interest in the subject real Property independent of the TRUST. Th claims to title to the Property are based upon an unlawful transfer, as alleged herein.

The Fourth Cause of Action is for “Rescission of Void Quitclaim Deed Against WILLIAM CHRUDIMSKY”. (CT 8) At paragraph 45 of the Complaint it states:

Plaintiffs seek a declaration from this Court that the said October 17, 2012 Quitclaim Deed to WILLIAM CHRUDIMSKY was without authority and that the Luxor Property is rightly an asset of the TRUST.

A quiet title and a cancellation of deed cause of action, whether asserted inside a probate court trust litigation or in a general

civil litigation are causes of action in equity for which there is no right to a jury trial. *Thompson v. Thompson* (1936) 7 Cal.2nd 671; *Clyne v. Brock* (1947) 82 Cal.App.2nd 958.

After a demurrer to the complaint was sustained, the trial court heard a motion for reconsideration, which it granted. (CT 57-60) For this Court's convenience, the 4-page Order is included as an attachment to this Brief. **(Attachment 1)**

Then the court vacated its order granting the demurrer and overruled the demurrer. The trial court stated in part in its Minute Order granting reconsideration:

The Court reaffirms its position that this matter should be heard in the probate department of the superior court. Probate Code section 17200 was intended to ensure that the department of the superior court that customarily deals with probate matters will exercise exclusive, concurrent jurisdiction over the internal affairs of a trust. See Prob. Code 17200, Law Revision Commission Comments, 1990 enactment.

In Los Angeles County, there are mandatory filing rules. Proceedings brought under the Probate Code must be filed in Department One, Central District (absent some enumerated exceptions for filing in the North District). Local Rule 2.3(a)(1), 4.3. Plaintiff's complaint was not filed in accordance with the Local Rules.

Thereafter, Respondent filed his motion to transfer this matter to the probate court pursuant to CCP §402. (CT 87-117) After a hearing, the trial court issued its Minute Order transferring the case

to the probate court. (CT 125-127) For this Court's convenience, the 3-page Order is included as an attachment to this Brief.

(Attachment 2)

The trial court stated in part:

Despite Plaintiff's opposition to the contrary, a review of the case's complaint submitted at Exhibit A of the motion confirms that the gravamen of the action involves the internal affairs of a trust. Plaintiff sues Defendant in his capacity as trustee as well as individually. Plaintiff's first cause of action cites numerous Probate Code sections as the basis of the claim for breach of fiduciary duty. His second cause of action seeks an accounting of the Trust's records and alleges he has not received his fair share of the assets. The third and fourth causes of action allege Defendant improperly conveyed to himself real property that is an asset of the Trust without authority to do so.

STANDARD OF REVIEW

Respondent disagrees with Appellant on the standard of review. Appellant is advancing a de novo review. Respondent asserts that the standard of review is an abuse of discretion standard. Why? CCP §402 is contained in Part 2, Title 4 of the Code of Civil Procedure. Title 4's caption reads, "Of the Place of Trial, Reclassification and Coordination of Civil Actions". CCP §402 is contained within Chapter 1, "Place of Trial". The code sections there speak of venue. It can easily be said that CCP §402 is a form of sub-venue within a county's superior court.

In this case, the appeal is challenging a change of venue to a probate court pursuant to CCP §402 and Los Angeles County Superior Court Rule 2.3. Both trial court departments considered the complaint and rendered a conclusion that was a reasonable exercise of their discretion. *Department of Parks and Recreation v. State Personnel Board* (1991) 233 Cal.3rd 813. Here, the review for change of venue is under the abuse of discretion standard. *Ford Motor Credit Co. v. Superior Court* (1996) 50 Cal.4th 306. The trial court ruling can only be reversed upon a showing of “a clear case of abuse and a miscarriage of justice”. *Blank v. Kirwan* (1985) 39 Cal.3rd 311. An appealed order is presumed correct. *Dentram v. Superior Court* (1970) 2 Cal.3rd 566.

Appellant is advancing the de novo standard of review and asserts this appeal involves a pure question of law and does not involve a resolution of disputed facts. (AOB 13) Appellant is not asking this court to interpret CCP §402. Appellant is actually arguing that the facts in the Complaint were improperly interpreted by the trial court when it made its finding that this matter should be tried in a probate court. In other words, the Appellant is arguing that the trial court abused its discretion when it transferred this matter to probate.

Respondent asserts the trial court did not abuse its discretion.

LEGAL ARGUMENT

I. CAUSES OF ACTION NUMBERS 2, 3, AND 4 WERE NEVER TO BE TRIED BY A JURY.

As set forth above, these three Causes of Action, even if tried in general civil court, are all equitable. Accounting, quiet title, and rescission (cancellation) of deed would not have gone to a jury.

II. CAUSE OF ACTION NUMBER 1 FOR BREACH OF FIDUCIARY DUTY CAN BE TRIED BY A JURY UNLESS IT INVOLVES THE INTERNAL AFFAIRS OF A TRUST.

PC §17000 states:

(a) The superior court having jurisdiction over the trust pursuant to this part has exclusive jurisdiction of proceedings concerning the internal affairs of trusts. (Emphasis added.)

(b) The superior court having jurisdiction over the trust pursuant to this part has concurrent jurisdiction of the following:

(1) Actions and proceedings to determine the existence of trusts.

(2) Actions and proceedings by or against creditors or debtors of trusts.

(3) Other actions and proceedings involving trustees and third persons.

This case does not involve a proceeding to determine the existence of a trust. This case does not involve creditors or debtors of a trust. This case does not involve a trustee and a third person.

There is no concurrent jurisdiction.

This case is a battle between two beneficiaries who were, at one time, two co-trustees of the same trust. The duty owed is one owed by a trustee to a beneficiary. Thus, the probate court has exclusive jurisdiction. And, there is no right to a jury trial.

PC §17006.

In the Complaint, Appellant asserts breach of fiduciary duty against his co-trustee. Appellant seeks a . . . “fair and even distribution of all of the trust assets. . . “ And, as set forth at paragraph 18 of the Complaint, contained within the breach of fiduciary duty Cause of Action, it states in part:

William CHRUDIMSKY has prevented all participation by Plaintiff and has essentially usurped complete control of the Trust. As such William CHRUDIMSKY is in breach of his duties as a co-trustee.

Appellant relies on *Estate of Jimenez* (1997) 56 Cal.App.4th 733, for his argument that this case should have been tried in a general civil department. That case can be distinguished. That case involved a petition for an order that decedent be disinterred from one cemetery and re-interred at another. The case was filed in a probate court which dismissed the petition on the grounds it was not within the jurisdiction of the probate court.

The decedent's will did not contain any instructions concerning the disposition of her remains. *Jimenez, supra* at 735. The rights and obligations concerning disposition of dead bodies are controlled by statutes contained in the Health and Safety Code. *Jimenez, supra* at 737.

The *Jimenez* court at page 740 states:

The body of one whose estate is in probate unquestionably forms no part of the property of that estate. It is recognized that the individual has a sufficient proprietary interest in his own body after his death to be able to make valid and binding testamentary disposition of it. The court in probate and the personal representative acquire jurisdiction from the last testament to see that its provisions in this regard, as in all others, are duly executed; but where, as in this case, the will is silent, the court in probate has no such power.... [The right of disposing of the body] belong [s] to the next of kin...." (*O'Donnell v. Slack* (1899) 123 Cal. 285, 288–289, 55 P. 906.)

The court further states at page 742:

Health and Safety Code section 7100, subdivision (d) currently provides a different substantive rule, that a decedent's wishes should be followed even if they are expressed outside the will, but this does not detract from O'Donnell's procedural rule that the probate court has no jurisdiction if decedent's wishes are not contained in the will. As the court below held, appellant's remedy is a civil action in superior court (e.g., *Smith v. Vidovich*, *supra*, 242 Cal.App.2d 206, 51 Cal.Rptr. 196) or a petition under Health and Safety Code section 7526, not a petition in probate.

This present case does not involve a will or the Health and

Safety Code. It involves a trustee's breach of fiduciary duty.

Jimenez cannot be relied upon to argue that a trust case belongs in a general jurisdiction civil court.

Appellant also relies substantially on *Harnedy v. Whitty* (2003) 110 Cal.App.4th 1333. There, a brother sued his sister for fraud, constructive fraud, financial elder abuse, and cancellation of a deed. The matter was filed in a general trial court in Alameda County. On appeal the appellant urged that the case should have been tried in the probate department.

The appellate court stated at page 1344:

But, even before *Abelleira*, our Supreme Court made clear that, even in a county having a formal probate department, a nonprobate department does not lack fundamental jurisdiction over a probate matter. Instead, and as that court held in *Dowdall v. Superior Court* (1920) 183 Cal. 348, 353, 191 P. 685 (*Dowdall*), the probate department has "primary" jurisdiction and a nonprobate department "secondary" jurisdiction of probate-related proceedings.

Then at page 1345 the court stated:

Probate Code sections 17000 and 17001 did not change this state of affairs. Those statutes were enacted (in original form in 1986) to make clear that the probate departments of the California superior courts could exercise the full and complete jurisdiction of a regular superior court when hearing and deciding a probate matter. (See, generally, 11 Witkin, Summary of Cal. Law (9th ed. 1990) Trusts, §§ 229–230, pp. 1074–1077.) It is true that Probate Code section 17000, subdivision (a),

gives the probate department of the relevant superior court “exclusive jurisdiction of proceedings concerning the internal affairs of trusts.” (Prob.Code, § 17000, subd. (a).) But, for two separate and distinct reasons, that provision does not support appellant's subject matter jurisdiction argument.⁴ . . .

First of all, and for the reasons made clear in *Abelleira*, the sort of jurisdiction provided by this section is not the sort of fundamental jurisdiction, i.e., implicating the competency or inherent authority of the court, the lack of which would render a judgment void. As a consequence, by not raising any issue relating to the trial court's jurisdiction below and by, instead, participating fully in the pretrial and trial of this case, appellant is barred by principles of waiver (*citations*) from raising any such issue here.

Second, the allegations of the complaint do not relate to the internal affairs of the trust as that term is used in Probate Code, section 17000, subdivision (a). That term has been defined thusly: “Internal trust affairs, for example, include modification of the terms of the trust, changes in a designated successor trustee, other deviation from trust provisions, authority over the trustee's acts, or the administration of the trust's financial arrangements.” (*Estate of Mullins* (1988) 206 Cal.App.3d 924, 931, 255 Cal.Rptr. 430.) As appellant concedes in her briefs to this court, nothing resembling any of these issues was raised by respondent's complaint.

This case supports the argument that a non-internal trust affairs case can be tried in a general trial court. However, it also supports the argument that a trust internal affairs case belongs in a probate department. Thus, this case does not support Appellant's arguments in this matter. The breach of a trustee's duties is an

express issue concerning the internal affairs of a trust. PC §17200(b)(12).

III. THE BREACH OF FIDUCIARY DUTY, QUIET TITLE, AND RESCISSION CAUSES OF ACTION ARE ACTUALLY MIS-TITLED PROBATE CODE §850 CAUSES OF ACTION.

In the California Probate Code, Division 9 (Trust Law), Part 5 (Judicial Proceedings Concerning Trusts), Chapter 3 (Proceedings Concerning Trusts) at §17200.1, it states in full:

All proceedings concerning the transfer of property of the trust shall be conducted pursuant to the provisions of Part 19 (commencing with Section 850) of Division 2.

Probate Code, Division 2 (General Provisions), Part 19 (Conveyance or Transfer of Property Claimed to Belong to Decedent or Other Person), at §850(a)(3)(A)and(B) state:

(a) The following persons may file a petition requesting that the court make an order under this part: . . .

(3) The trustee or any interested person in any of the following cases:

(A) Where the trustee is in possession of, or holds title to, real or personal property, and the property, or some interest, is claimed to belong to another.

(B) Where the trustee has a claim to real or personal property, title to or possession of which is held by another. . . .

At paragraphs 18 and 20 of the Breach of Fiduciary Cause of Action, it is alleged that Appellant is a co-trustee and that

Respondent deeded trust property to himself. (CT 10)

At paragraphs 37 and 38 of the Quiet Title Cause of Action, Appellant alleges that Respondent has title to trust real estate that actually should be titled in the name of the Trust. (CT 7 & 8) At paragraphs 44 and 45 of the Recision Cause of Action, Appellant again alleged that Respondent is holding title to real estate that is an asset of the Trust. (CT 14)

In all three Causes of Action the trustee or interested person (Appellant, if he is or is not a co-trustee, but always as a beneficiary (PC §48)) is seeking to perfect a claim for trust real property held by Respondent. Quite obviously, this matter belonged in the probate department.

CONCLUSION

The discretion exercised by the two general trial department judges should be affirmed. Both trial departments opined that the whole complaint dealt with the internal affairs of the mother's trust. Since there was no appeal from the findings of the probate department trial, and both of the general trial departments' findings show no abuse of discretion, their findings must be affirmed.

(Signature next page)

DATED: 9/15, 2019

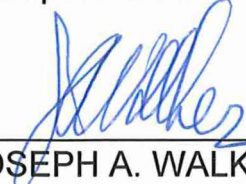
By: _____


JOSEPH A. WALKER, ESQ.
Attorney for Respondent,
WILLIAM CHRUDIMSKY, JR.

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 8.204(c) of the California Rules of Court, I hereby certify that this brief contains 3,459 words, including footnotes. In making this certification, I have relied on the word count of the computer program used to prepare the brief.

Dated: 9/15, 2019

By: 
JOSEPH A. WALKER, ESQ.
Attorney for Respondent,
WILLIAM CHRUDIMSKY, JR.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 10/28/14

DEPT. SE D

HONORABLE RAUL A. SAHAGUN

JUDGE J. SANDERS

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

A. SANTOS

Deputy Sheriff

NONE

Reporter

1:30 pm VC064045

Plaintiff PAUL ORLOFF (X)
Counsel

PHILIP CHRUDIMSKY
VS

Defendant MARCO A. VAZQUEZ (X)
Counsel

WILLIAM PAUL CHRUDIMSKY JR., et

AO

NATURE OF PROCEEDINGS:

PLAINTIFF'S MOTION FOR RECONSIDERATION OF THIS COURT'S SEPTEMBER 11, 2014 ORDER;

Cause is transferred from Department SE C.

Tenatative order is issued.

Cause is called for hearing and argued.

The Court's tentative order is made the final order of the Court.

Plaintiff PHILIP CHRUDMSKY's motion for reconsideration of this Court's September 11, 2014 order is GRANTED. Le Francois v. Goel (2005) 35 Cal.4th 1094.

The September 11, 2014 order on the demurrer is VACATED. Defendant's demurrer to the complaint is OVERRULED.

Defendant has 45 days to serve and file a responsive pleading.

This action involves a dispute between beneficiaries of a trust. In his complaint, plaintiff alleges breach of fiduciary duty, quiet title and rescission of a deed and also seeks an accounting of the trust assets. Title to a certain parcel of real property is at

MINUTES ENTERED 10/28/14 COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 10/28/14

DEPT. SE D

HONORABLE RAUL A. SAHAGUN

JUDGE J. SANDERS

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

A. SANTOS

Deputy Sheriff

NONE

Reporter

1:30 pm

VC064045

Plaintiff PAUL ORLOFF (X)
Counsel

PHILIP CHRUDIMSKY

VS

Defendant MARCO A. VAZQUEZ (X)
Counsel

WILLIAM PAUL CHRUDIMSKY JR., et

AO

NATURE OF PROCEEDINGS:

issue, as well as distribution of other trust assets. See Comp., 11, 13. The breach of fiduciary duty claim is based on duties enumerated in the Probate Code.

Defendant filed a demurrer, arguing that this action must be heard in the probate court. Prob. Code 17200 et seq. Ultimately, the Court agreed and issued an order sustaining the demurrer without leave to amend.

Plaintiff seeks reconsideration on the ground that the court failed to apprehend the legislatively mandated jurisdictional precedence that the court has over the matter. Code of Civil Procedure section 1008 allows a party to seek reconsideration upon a showing of new or different facts, circumstances or law. Plaintiff did not satisfy that requirement.

Section 1008 does not limit the court's power to revisit its interim rulings, even where it is prompted to do so by a litigants motion. Le Francois v. Goel (2005) 35 Cal.4th 1094. It elects to do so here.

As the September 22 order indicates, this Court acknowledges its fundamental subject matter jurisdiction. The order sustaining the demurrer under section 430.10(a) was in error, as the

MINUTES ENTERED 10/28/14 COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 10/28/14

DEPT. SE D

HONORABLE RAUL A. SAHAGUN

JUDGE

J. SANDERS

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

A. SANTOS

Deputy Sheriff

NONE

Reporter

1:30 pm

VC064045

Plaintiff

PAUL ORLOFF (X)

Counsel

PHILIP CHRUDIMSKY

VS

Defendant

MARCO A. VAZQUEZ (X)

WILLIAM PAUL CHRUDIMSKY JR., et

Counsel

AO

NATURE OF PROCEEDINGS:

superior court does not lack subject matter jurisdiction. Cf. Holiday Matinee, Inc. v. Rambus, Inc. (2004) 118 Cal.App.4th 1413 (demurrer properly brought under subsection (a) to challenge causes of action arising under federal patent law). Defendant's objection (by way of demurrer) was not the proper procedural vehicle to challenge the filing.

The Court reaffirms its position that this matter should be heard in the probate department of the superior court. Probate Code section 17200 was intended to ensure that the department of the superior court that customarily deals with probate matters will exercise exclusive, concurrent jurisdiction over the internal affairs of a trust. See Prob. Code 17200, Law Revision Commission Comments, 1990 enactment.

In Los Angeles County, there are mandatory filing rules. Proceedings brought under the Probate Code must be filed in Department One, Central District (absent some enumerated exceptions for filing in the North District). Local Rule 2.3(a)(1), 4.3. Plaintiff's complaint was not filed in accordance with the Local Rules.

This Court is without authority to transfer an action to a different district. See Local Rule

MINUTES ENTERED 10/28/14 COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 10/28/14

DEPT. SE D

HONORABLE RAUL A. SAHAGUN

JUDGE J. SANDERS

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

A. SANTOS

Deputy Sheriff

NONE

Reporter

1:30 pm

VC064045

Plaintiff
Counsel

PAUL ORLOFF (X)

PHILIP CHRUDIMSKY

VS

Defendant

MARCO A. VAZQUEZ (X)

WILLIAM PAUL CHRUDIMSKY JR., et

Counsel

AO

NATURE OF PROCEEDINGS:

2.3(b)(2). Defendant may file a motion to transfer the matter in Department One of the Central District.

Status Conference re responsive pleading is set on 1/28/15, at 8:30 am, in Department SE F.

Moving party to give notice.

MINUTES ENTERED 10/28/14 COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 01/22/15

DEPT. 1

HONORABLE KEVIN C. BRAZILE

JUDGE L. ISMAEL

DEPUTY CLERK

HONORABLE
2

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

R. ECHON, C.A.

Deputy Sheriff

NONE

Reporter

9:00 am	VC064045	*no legal file*	Plaintiff Counsel	PAUL ORLOFF (X)
	PHILIP CHRUDIMSKY			
	VS		Defendant Counsel	MARCO A. VAZQUEZ (X)
	WILLIAM PAUL CHRUDIMSKY JR., et			

AO

NATURE OF PROCEEDINGS:

MOTION OF DEFENDANT, WILLIAM CHRUDIMSKY TO TRANSFER ACTION TO PROPER COURT LOCATION

The parties are provided a copy of the Court's tentative ruling.

Matter is called for hearing.

After oral argument, the Court issues its order consistent with its posted tentative ruling which is adopted and incorporated herein as follows:

Plaintiff Philip Chrudimsky filed this unlimited jurisdiction action on May 22, 2014 for breach of fiduciary duty, accounting, quiet title, and rescission of void quitclaim deed against defendant William Paul Chrudimsky Jr., individually and as trustee of the Josephine Chrudimsky Trust, as well as all others claiming interest in the real property located at 8416 Luxor Street in Downey. The case was filed in the Southeast Judicial District, Norwalk courthouse, where the case is now assigned to Department F, presided over by Judge Margaret Bernal.

On December 29, 2014, Defendant William Paul Chrudimsky Jr., in his individual and trustee capacities, filed a motion to transfer this case to

01/22/15

MINUTES ENTERED
01/22/15
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 01/22/15

DEPT. 1

HONORABLE KEVIN C. BRAZILE

JUDGE L. ISMAEL

DEPUTY CLERK

HONORABLE
2

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

R. ECHON, C.A.

Deputy Sheriff

NONE

Reporter

9:00 am

VC064045

no legal file

Plaintiff
Counsel

PAUL ORLOFF (X)

PHILIP CHRUDIMSKY

VS

Defendant

MARCO A. VAZQUEZ (X)

WILLIAM PAUL CHRUDIMSKY JR., et

Counsel

AO

NATURE OF PROCEEDINGS:

the Central Judicial District because the case involves the internal affairs of a trust and against a trustee of the trust, and LASC Local Rule 2:3(a)(1)(A) requires all proceedings under the Probate Code, including Trust proceedings, to be filed in the Central District (unless the case qualifies to be filed in the North District).

Plaintiff Philip Chrudimsky opposes the motion, arguing that his case is one for quiet title and the fact that there was a trust is just a red herring argument forwarded by Defendant in order to avoid jury trial. Because the property was taken out of the trust, and the case involves alleged fraud and undue influence in the transfer documents, Plaintiff argues this is not a matter for the probate courts.

Despite Plaintiff's opposition to the contrary, a review of the case's complaint submitted at Exhibit A of the motion confirms that the gravamen of the action involves the internal affairs of a trust. Plaintiff sues Defendant in his capacity as trustee as well as individually. Plaintiff's first cause of action cites numerous Probate Code sections as the basis of the claim for breach of fiduciary duty. His second cause of action seeks an accounting of the Trust's records and alleges he has not received his fair share of the assets. The third and fourth causes of action allege Defendant improperly conveyed to himself real property that is an asset of the Trust without authority to do so. Indeed, the

01/22/2015

MINUTES ENTERED 01/22/15 COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 01/22/15

DEPT. 1

HONORABLE KEVIN C. BRAZILE

JUDGE L. ISMAEL

DEPUTY CLERK

HONORABLE
2

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

R. ECHON, C.A.

Deputy Sheriff NONE

Reporter

9:00 am

VC064045

no legal file

Plaintiff PAUL ORLOFF (X)
Counsel

PHILIP CHRUDIMSKY

VS

Defendant MARCO A. VAZQUEZ (X)

WILLIAM PAUL CHRUDIMSKY JR., et Counsel

AO

NATURE OF PROCEEDINGS:

October 28, 2014 court order submitted at Exhibit B also found that this is a case that should be heard in the probate law courts and noted that only Department 1 had the authority to effectuate such a transfer.

Department 1 may transfer non-personal injury actions from one district to another, including when the case was not filed in the proper district. See Local Rule 2.3(b)(2). Given that this case is a trust proceeding, this case is governed by the mandatory filing requirements of Local Rule 2.3(a)(1)(A), which provide that the case must be filed in the Central District (unless it qualifies to be filed in the North District, which this case does not).

Accordingly, the motion to transfer is GRANTED; the court hereby vacates all future hearing dates currently set and transfers this matter to the Central Judicial District courthouse for reassignment to a probate law department. Notice of the case reassignment will issue shortly.

Counsel for defendant/moving party is to give notice.

01/22/2015

MINUTES ENTERED 01/22/15 COUNTY CLERK

PROOF OF SERVICE
(C.C.P. §§1013, 1013a, 2015.5)

The undersigned declares as follows: I am employed in the County of Orange, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 3991 MacArthur Blvd., Suite 350, Newport Beach, CA 92660. **My email address is jizabal@twlf.net.**

On the date set forth below, following ordinary business practices, I served a copy of the **RESPONDENT'S BRIEF** on the following person(s) in this action:

California Court of Appeal
Second Appellate District - Division 4
300 S. Spring St., Fl. 2, N. Tower
Los Angeles, CA 90013
(Brief and Appendix, via TrueFiling)

California Supreme Court
300 S. Spring St.
Los Angeles, CA 90013
(Brief only, via TrueFiling)

The Hon. Mary Thornton House
Los Angeles County Superior Court
111 North Hill Street
Los Angeles, CA 90012
(Brief only, by Overnight Mail)

Attorney for Appellant
Scott Wm. Davenport, SBN 159432
MANNING & KASS, ELLROD, RAMIREZ,
TRESTER LLP
801 S. Figueroa St., 15th Flr.
Los Angeles, CA 90017
Email: swd@manningllp.com
(Brief & Appendix, via TrueFiling)

- (BY MAIL) I am readily familiar with this firm's practice for collecting and processing correspondence for mailing in the United States Postal Service. In the ordinary course of business, the correspondence would be deposited with the U.S. Postal Service on the same day it is prepared, with the postage fully paid. I caused the above-mentioned document(s) to be deposited in the United States Postal Service, in a sealed envelope with postage fully prepaid and addressed to the person(s) being served, at Newport Beach, California.
- (BY OVERNIGHT DELIVERY) I caused the above-mentioned document(s) to be delivered to an overnight (express) delivery carrier, in an envelope designated by said overnight delivery carrier and addressed to the person(s) being served, with delivery fees provided for. **L.A. Superior Court only**
- (BY MESSENGER) I served the documents by placing them in an envelope or package addressed to the person(s) being served, and providing them to a professional messenger service for service.
- (BY ELECTRONIC MAIL via truefiling.com) I caused the above-mentioned document(s) to be transmitted this date by electronic transmission to the persons being served, from Newport Beach, CA.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed in Newport Beach, CA.

April 16, 2019
(Date)


JUDITH E. IZABAL