

Date: April 20, 2010

HONORABLE: REVA GOETZ, NONE	JUDGE A. MURDOCK, NONE	DEPUTY COURT CLERK CSR
DEPUTY SHERIFF		

BP - 100614

GARRISON, GREG - TRUST

NO APPEARANCES

NATURE OF PROCEEDINGS: RULING ON SUBMITTED MATTER

In this matter taken under submission on April 2, 2010, 2010, the Court rules as follows:

Greg Garrison Trust
BP 100614

Estate of Greg Garrison¹
BP 091848

Tentative Statement of Decision

This matter came on the regularly scheduled calendar for trial on November 19 and 24, 2009, January 14, 15 and 27, and March 5, 2010. At the conclusion of the testimony and admission of the evidence, it was agreed between counsel and the court that written argument would be submitted to the court not later than April 2, 2010 after which this matter would be deemed under submission.

Petitioners Michael and Patricia Garrison are represented by Stephen F. Moeller, Valensi Rose, PLC. Respondent Ronald L. Blanc, Trustee of the Greg Garrison Revocable Trust, as Amended and Completely Restated U/T/D July 12, 1999 is represented by Michael J. Kump, Kinsella Weitzman Iser Kump & Aldisert, LLP. The Honorable Reva G. Goetz presiding.

At issue before the court is a petition brought pursuant to Probate Code §850 filed on February 11, 2008 in which it is alleged that the settlor, Greg Garrison, fraudulently obtained real property located at 10501 Wilshire Blvd., Unit 802, Los Angeles, California from Petitioners after their mother's death. Greg Garrison died on March 25, 2005. Petitioners seek the return of a one-half interest in the property to be held as tenants-in-common. Respondent filed objections to the petition.

Because the parties all share the same last name, the court refers to them by their first names with no disrespect intended. After considering all testimony, evidence and written argument submitted by counsel, the court now issues its Tentative Statement of Decision in the form of Findings and Orders.

¹ There is no trial matter related to the Estate of Greg Garrison before the court at this time. There was an account current for the estate filed on October 30, 2009 that has been trailing the trial matter and the court acknowledges that for purposes of tracking the progress of that matter.

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Minutes Entered: April 20, 2010
GARRISON, GREG - TRUST
BP - 100614

I. Findings

A. Preliminary Facts:

1. Greg Garrison and Ray Ellen Garrison were married to each other and are petitioners' parents.
2. Greg Garrison and Ray Ellen Garrison separated on April 15, 1990² and the Judgment of Dissolution was filed in Los Angeles Superior Court on December 12, 1995. In part, the Judgment of Dissolution provided that each of the parties was awarded an undivided ½ interest in two pieces of real property as tenants-in-common:
 - a. A residence located at 333 South Mapleton Drive, Los Angeles, California 90034, and
 - b. The property at issue in this matter, a co-op located at 10501 Wilshire Blvd., Unit 802, Los Angeles, California
3. Ray Ellen passed away on March 12, 1999.
4. Ray Ellen left the residue of her estate to the Petitioners. Petitioners allege that Decedent and Settlor, Greg Garrison, fraudulently induced them to agree to transfer Ray Ellen's ½ interest in the co-op to him based on a representation that Ray Ellen had agreed to transfer her interest in the co-op to him in exchange for a \$25,000 credit against monies she owed him. Petitioners further allege that the representation was supported by a forged document, Exhibit 15.

B. Transfer of Condo to Greg

1. Paul Levinson is an attorney who has represented the parties in different capacities over many years as follows:
 - i. He did legal work for Greg's corporation, for example gifting of stock in Greg's corporation to the Petitioners,
 - ii. Prepared Ray Ellen's estate plan,
 - iii. Petitioners contacted him regarding representing them as personal representatives of Ray Ellen's estate. Mr. Levinson represented Petitioners before he represented Greg,
 - iv. Prepared Michael and his wife's estate plan,
 - v. Prepared Greg's estate plan and represented him for approximately 1½ - 2 years after that,
 - vi. Handled licensing for Greg's companies or Greg.
2. Levinson testified to the following:
 - a. In July 1999 he received a phone call from Greg. They discussed the condo. Greg told Levinson that he and Ray Ellen had reached an agreement regarding the condo and that he would provide more information about it.
 - b. Levinson told Greg that he would have to have the executors (Petitioners Michael and Pat) approve the transfer requested by Greg. Greg did not object to Levinson calling Petitioners.
 - c. Levinson called Michael about the letter that was faxed to him by Greg, Exhibit 15. He did not provide a copy of the letter to Michael, but told Michael what the substance of the letter was.

² This is the date of separation indicated on Exhibit 63, Judgment of Dissolution filed on December 12, 1995.

- d. For reasons not related to this matter, it took approximately two years for the property transfer to be completed. The property was transferred into the Greg Garrison Trust.
3. Michael testified to the following:
- a. In September 1999 he received a phone call from Mr. Levinson regarding the document transferring the condo to his father from his mother.
 - b. Michael trusted his father.
 - c. Greg had never lied to Michael.
 - d. Michael was to get permission from Pat, his sister and co-executor.
 - e. Michael did not ask for a copy of the letter and it was not sent to him.
 - f. Michael told Pat that their mother owed their father thousands of dollars and signed off the condo in lieu of the money. Pat said 'yes.'
 - g. Two years later, in April 2001, Michael saw the letter when he had to sign away his mother's rights as executor. At that time he believed the signature was his mother's.
 - h. In the summer of 2005 Michael was looking for documents related to the Ferrari car collection co-owned by his parents when he found three documents stapled together. One of the documents was the letter dated April 16, 1997 (Exhibit 14, an unsigned version of Exhibit 15), and one of the documents was a letter dated March 14, 1994 (Exhibit 34).
 - i. Michael became upset when he read the April 16, 1997 letter (Exhibit 14) because:
 - a) Michael believed that his mother would never have given up the condo to Greg.
 - b) Ray Ellen had created a Trust naming Michael and his sister as beneficiaries of the trust.
 - c) Michael never discussed ownership of the condo with either his mother or his father. He had no knowledge of the agreement in 1997 between his parents regarding the condo.
 - d) Ray Ellen had no objections to any work being done at the condo by Greg.
 - ii. Exhibit 34 is a letter dated March 14, 1994 that is not signed. It may or may not be complete or a finished letter. Regarding Exhibit 34, Michael testified to the following:
 - a) Ray Ellen did not need the care of any nurse in 1994 because she was healthy.
 - b) Michael testified that his parents would not have gone to the Pacific Dining Car in April 1994.
- C. Exhibit 15, April 16, 1997 letter
- 1. Michael and Pat brought Exhibit 15 to Helen McGrath. Michael was very agitated. Ms. McGrath told Michael that she did not remember typing the letter or seeing Greg cut and paste Ray Ellen's signature on it. Greg did not ask Ms. McGrath to find a copy of Ray Ellen's signature for him.
 - 2. Ms. McGrath was upset with Michael because he had told others that she had typed Exhibit 15 and seen Greg cut and paste Ray Ellen's signature onto it.

3. Exhibit 15 has a fax number at the top with a '406' area code. Patricia testified that 406 is the area code for Montana. Her father had a fax machine in Montana and he would fax letters to Helen McGrath. Helen and Greg corresponded through the fax machine.
4. Michael believes Exhibit 15 is a forgery because:
 - a. There was no self-addressed stamped envelope with the documents.
 - b. He has not seen a signed original of the document. He has looked for the original and only found a copy.
 - c. Helen did not work for Greg in 1994. He showed Helen the 1997 letter and she recalled typing it.

D. Helen McGrath

1. Helen McGrath worked for Greg Garrison Productions as Greg's secretary from June 1997 until his death in March 2005. Her duties were to do the banking, pay bills, taking dictation, filing, and preparing correspondence.
2. Ms. McGrath's desk was in the living room of the trailer that was maintained as an office on the Thousand Oaks property.
3. Ms. McGrath occasionally changed the font she used. She used Verdana and the default font was New Times Roman.
4. Three people had keys to the office, Greg, Pat and Ms. McGrath.
5. Other equipment in the trailer was a computer and printer, typewriter, copy machine, fax machine and an answering machine.
6. Pat sometimes used the computer for matters related to her horse business.
7. Occasionally documents were deleted from the word processor and/or the computer to make space, but nothing was deleted after Greg passed away.
8. Ms. McGrath kept original documents organized by subject matter and/or in 'chron' files.
9. The only time any files were saved to floppy discs was at the time of Y2K (2000) and concerns related to that.
10. Ms. McGrath never saw Greg type.
11. The file related to the condo was with the correspondence file taken by Michael.
12. Greg preferred writing letters to calling people on the phone. He wrote thousands of letters about many subjects, including business, football and baseball. He edited his own letters.
13. If Ms. McGrath typed a letter she would put her initials, 'hm,' on it.

E. Ray Ellen's health

1. Patricia (Pat) Garrison is Greg and Ray Ellen's daughter. Regarding her mother's health, she testified to the following regarding Exhibit 34
 - a. Exhibit 34 is a letter that appears to be written by Ray Ellen to Greg dated March 14, 1994. It does not appear to be complete since it does not bear a closing salutation and/or Ray Ellen's signature. Patricia testified to the following regarding this exhibit:
 - a) She did not know who prepared it, when it was prepared, and/or when it was printed.
 - b) She did not know if it was sent by her mother to her father or her father to her mother.

- c) She did not know if her parents had dinner together as referenced in the letter or if they had any agreement between them about their community property.
 - d) Patricia did not know of any medical condition her mother had at that time.
 - ii. In 1994 Ray Ellen was in good health.
 - iii. Ray Ellen went to Albuquerque in October 1994 to see a friend when Patricia was there to show horses.
 - iv. Patricia saw her mother every few weeks for dinner.
 - v. Except for approximately six months before she passed away from melanoma, Ray Ellen did not have any nurse care for her at any other time.
 - 2. Jon Allen Capper is Greg's nephew. He knew Ray Ellen very well and was close to the Petitioners, Greg and Ray Ellen.
 - a. Mr. Capper is a contractor and he worked on the condo (then a co-op) starting in August 1996 and completed his project by the end of October 1996. Mr. Capper later testified that he could have started work on the condo anytime between August 1996 and 1997.
 - b. Mr. Capper did not prepare the architectural renderings for the condo project, nor did he pull the permits.
 - c. In January 1996 Capper started work to repair damage from the Northridge earthquake on Ray Ellen's residence at 333 N. Mapleton Drive. He finished his work at Ray Ellen's residence in 1997.
 - d. Capper spoke with Ray Ellen almost daily during that time. Ray Ellen appeared healthy and lucid. She had a housekeeper, but Capper did not see any nurses tending to her. She drove her own car.
- F. Relationship between Ray Ellen and Greg
- 1. The parties separated in 1990 but never divorced.
 - 2. Exhibit 63, a settlement agreement regarding the division of property between Ray Ellen and Greg was filed with the court on December 12, 1995.
 - 3. Michael testified that he did not know that his parents had separated their property but did not divorce.
 - 4. Michael testified that he did not learn of his parents' property settlement until after his mother passed away.
- G. Relationship between Michael and Greg
- 1. Michael testified that up to 1999 he had a good relationship with his father.
 - 2. Greg wrote more to Michael than they talked. Mostly it was about football.
- H. Ray Ellen's handwritten will dated June 3, 1997 (Exhibit 102):
- 1. The court takes judicial notice of case number BP 055960, Estate of Ray Ellen Garrison:
 - a. Petition for Probate of Holographic Codicil filed on September 30, 1999 was filed on behalf of Petitioners in this matter, and
 - b. Proof of Holographic Instrument filed on October 7, 1999 was filed on behalf of Michael Garrison. Michael provided the information to support the admission of the holographic Codicil dated June 3, 1997, specifically Ray Ellen's signature.
 - c. The court finds that the holographic codicil is a valid document and statement of the intentions of Ray Ellen Garrison if she were to have

passed away during her surgery scheduled on the day after she wrote it.

2. The Codicil was written approximately 18 months after the Judgment was entered on December 12, 1995 in which Ray Ellen was awarded a ½ interest in the co-op (Exhibit 63).
3. The Codicil provided the following:
 - a. Ray Ellen was having surgery the next day and, just in case something untoward might happen she wanted both her children “to know exactly what I want if anything should happen...”
 - b. Ray Ellen was very specific in her intentions as stated in the holographic Codicil, including advice to her children to ‘hire a “killer” estate lawyer to see to it that Greg Garrison does not fool around in an attempt to cheat his kids.’
 - c. Later in the Codicil Ray Ellen explains her comment about Greg trying to cheat his kids writing, “I didn’t mean that Greg, when he is normal, would cheat the kids—but his mental problems do not allow him to act normally.”
 - d. Ray Ellen refers to the court ordered settlement reached by the parties (Exhibit 63) in the Codicil.
 - e. Ray Ellen identified each asset category of her estate, cash, stocks and bonds, a ½ interest in a Ferrari car collection, shares in Greg Garrison Productions, and the house on Mapleton that was owned ½ by Ray Ellen and ½ by Greg.
 - f. Noteworthy in the codicil filed with the court and accepted by all as a legitimate statement of her intentions at the time the document was written is that there is NO mention of the co-op.

I. Questioned documents

1. Before the court are many documents. The most significant document is Exhibit 15, the letter signed by Ray Ellen agreeing to transfer her interest as a tenant-in-common to Greg in exchange for a \$25,000 reduction in monies due to Greg as and for rent on the 333 Mapleton property.
2. James Blanco is a forensic document examiner called by the Petitioners as their expert. Mr. Blanco testified on November 19 and 24, 2009, January 14 and 27, 2010, and March 5, 2010. For the following reasons, among others, the court did not find Mr. Blanco’s testimony that the Ray Ellen signature on the questioned document was a forgery persuasive:
 - a. There are different versions of Exhibit 14, the letter dated April 16, 1997. Mr. Blanco picked the document that provided the best legibility of the document. Exhibit 14 is NOT the same as the signed letter, Exhibit 15.
 - b. Mr. Blanco, based on the information he had, could not express an opinion regarding the following:
 - i. The delivery of the letter, Exhibit 15, to Ray Ellen.
 - ii. The date on which the letter, Exhibit 15, was first written or typed.
 - iii. Whether the signature on Exhibit 15 was or was not cut and pasted onto Exhibit 15.

- c. Mr. Blanco testified that based on his examination of Ray Ellen's handwriting he had two opinions:
 - i. It was highly probable that Ray Ellen did not sign the April 16, 1997 letter, and
 - ii. It was probable that Judy Garrison signed the April 16, 1997 letter.
 - d. Mr. Blanco testified after Mr. Oleksow that there are fundamental features in an individual's handwriting, but that he and Mr. Oleksow's opinions as to what would be a fundamental feature might differ. While Mr. Blanco saw consistency with other known signatures of Ray Ellen, in his opinion, the defects of the questioned signature were not resolved.
3. David Oleksow is a forensic document examiner called by the Respondent as his expert. Mr. Oleksow testified on January 27 and March 5, 2010. For the following reasons, among others, the court found Mr. Oleksow's testimony that the Ray Ellen signature on the questioned document was not a forgery persuasive:
- a. Mr. Oleksow formed the opinion that it was highly probable that Ray Ellen Garrison was responsible for the questioned signature on Exhibit 15 based on the totality of his examination of the features included in known and questioned documents.
 - b. Some of the features on the questioned signature on Exhibit 15 that appeared to be 'accidental features' were determined not to be accidental in 'formal signatures' on formal documents such as prior estate planning documents, a Will dated March 9, 1990, a Codicil dated December 2, 1991, and the holographic will dated June 3, 1997.

J. Findings on Contested Issues

1. No evidence was introduced to establish that Greg exercised undue influence over Ray Ellen in any way related to this transfer or within the meaning of Family Code §721. Neither Greg nor Ray Ellen ever discussed their property settlement with either Petitioner and neither Petitioner was aware of the negotiations related to the property settlement.
2. The facts in this matter are distinguishable from In Re Marriage of Haines (1995), 33 Cal.App.4th 277. In the instant matter, the parties separated in 1990 and the property settlement was entered on December 12, 1995. The parties were not living together at the time Exhibit 15 was signed. There was no deed signed by Ray Ellen conveying her interest in the property to Greg, and there is no evidence of how the agreement between Greg and Ray Ellen was reached. The agreement between Ray Ellen and Greg is evidenced by Ray Ellen's signature on a letter generated by Greg and corroborated by the omission of the co-op property from her June 3, 1997 Codicil written by Ray Ellen less than two months after the letter (Exhibit 15) was signed. Michael did not question the representation that his mother had signed over the co-op to Greg when the subject was presented to him in 1999 or in the two years between Greg's representation about the transfer of the co-op by Ray Ellen and when the documents were signed by Michael.

3. Assuming that Michael is challenging the Evidence Code §662 presumption that Greg is presumed to be the owner of the co-op based on the documents that he signed, Michael has not rebutted the presumption by clear and convincing evidence.
4. Based on both, the handwritten Codicil dated June 3, 1997 in which Ray Ellen does NOT mention the co-op, the lack of evidence of undue influence, and the findings above regarding the forensic document analysis, the court finds that the April 16, 1997 document in which Ray Ellen transferred her ½ tenant-in-common interest to Greg is genuine and that the transfer is valid.
5. The court finds that the Petition is untimely and is barred by CCP §366.2. Petitioners argue that the subject matter of the Petition is not governed by CCP §366.2 and should be brought pursuant to Probate Code §850 which provides for the relief from fraud they seek in their Petition. The court finds that Michael was aware of Exhibit 15 in 1999 when he spoke with Mr. Levinson about it, and actually saw it in April 2001. Michael testified that he believed the document was genuine and that the signature was his mother's at that time. Legally Michael was placed on inquiry notice in 1999 and not later than 2001. The limitations period for fraud ran from those times. Michael's concerns regarding Exhibit 15 arise from documents he found in 2005 that are not signed and for which no foundation can be laid. The delay in Michael's investigation into the validity of the agreement between his parents and the question about whether or not his mother's signature was genuine is based solely on those documents does not provide an excuse to justify the delay in his investigation and/or resulting claim. (Saliter v. Pierce Brothers Mortuaries (1978) 81 Cal.App.3d 292,299-301.)

II. Orders:

- A. Petition to Determine Ownership (P.C. §850) – Greg Garrison Trust, BP 100614
 - JTD #1 – Denied with prejudice
 - JTD #2 – Objections are sustained

- B. Account Current – Estate of Greg Garrison, BP 091848
 - JTD #1 – Authority to administer the estate is extended to December 31, 2010
 - JTD #2 – If the estate is not closed, a Status Report is to be filed not later than November 19, 2010 and set for hearing on December 10, 2010 at 8:30 a.m. If the estate has been closed prior to that date the Status Hearing set for that date will go off calendar.

- C. Objections, if any, are to be filed with the court not later than May 21, 2010 after which the court will issue its final Statement of Decision.

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