

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

Estate of HELENA NICKOLAS
GRIBANOWSKI, Deceased.

DYMITRI GRIBANOWSKI,
Petitioner and Respondent,

v.

VLADIMIR IVANOVICH PRIVALOV,
Objector and Appellant.

A134627

(City & County of San Francisco
Super. Ct. No. PES-10-293409)

Vladimir Privalov, proceeding in propria persona here as in the trial court, appeals from an order entered pursuant to Probate Code¹ section 850, subdivision (a)(2)(B) granting the motion of Dymitri Gribanowski for enforcement of a contract entered by the decedent Helena Gribanowski.² The order was entered following an evidentiary hearing at which testimony was received but not reported; hence the record contains no reporter’s transcript. Thus, although Vladimir disputes factual findings of the probate court, we have no choice but to accept the truth of those findings. (See 9 Witkin, Cal. Procedure

¹ All statutory references are to the Probate Code unless otherwise noted.

² To avoid confusion, we refer to each of the Gribanowskis by their first names. There are various spellings of Dymitri, and we use this spelling as it appears in the record. We shall also refer to Privalov by his first name to be consistent with the terminology in the trial court’s order. We intend no disrespect to any of the parties.

(5th ed. 2008) Appeal, § 360, pp. 415-416.)³ Based on our review of the briefs and the documents contained in the clerk’s transcript, we perceive no legal error and therefore shall affirm the probate court order insofar as it upholds the validity of the contract in question.

Background

We recite the relevant facts and the conclusions of the trial court by quoting at length from the January 20, 2012 trial court order:

“Dmitri and Helena met in the 1940s when both lived and worked in China. They married in 1948 in the city of Harbin, China when he was 19 and she was 20. In 1952, they left China amidst the cultural revolution and moved to Poland. In 1967 Dmitri and Helena left Poland to come to the United States. They settled in San Francisco. In 1974 they opened RussArt, Inc., specializing in Russian art and travel, and worked together until 1987.

“In 1974, Dmitri and Helena purchased 1335 Laguna Street, #4 (“the Laguna Street property”) which comprised a share in the St. Francis Square Cooperative. Dmitri testified the share was in both of their names. They lived together at the Laguna Street property until their divorce on September 7, 1982. A final judgment of divorce was entered on December 22, 1982. . . . [¶] On May 5, 1982, Helena and Dmitri entered into an Agreement for Deferral in Title Interest (“Deferral Agreement”) regarding the Laguna Street property. . . . The Deferral Agreement provides, among other terms, that they own Apartment #4 at 1335 Laguna Street, San Francisco, that they mutually agree to divorce, that Helena wishes to continue to live in the property, that Dmitri agrees to move out, and that they will defer payment of Dmitri’s 50% interest in the property until after Helena’s death. The Deferral Agreement states in paragraph 2:

³ Vladimir’s appellate brief seems to anticipate that this court will receive additional evidence and even requests that this court designate a forensic expert to determine the genuineness of Helena’s signature on the agreement which he claims to be a forgery. However, “[t]he function of an appellate court is to review errors of law and not to pass on questions of fact.” (9 Witkin, Cal. Procedure, Appeals, *supra*, § 322, p. 369.) There is no basis for receiving additional evidence on appeal in this case.

“Wife on behalf of herself, her agents, representative, heirs, beneficiaries, executors, and assigns agrees that the payments to husband due this contract consist of the 50% of the remainder of money on the day of her death, on her Bank of America accounts (checking, savings, Time Deposit or any other.)

“On May 5, 1982, Dmitri and Helena also entered into a Mutual Property Settlement Agreement Due to Separation (“Property Settlement Agreement”). . . . The Property Settlement Agreement does not mention or reference the Deferral Agreement. The Property Settlement Agreement contains various terms including distribution of the Laguna Street property to Helena. It states, in pertinent part:

“All title interest in the Apartment #4 at 1335 Laguna Street, San Francisco, California, to which Mr. Dimitry Gribanowski hereby waives all claims and interest, he will sign all necessary legal papers which may be necessary and required when said apartment will be sold by Mrs. Gribanowski, without any claim for any additional compensation at that time.”

“In 1986 Helena married Vladimir and the St. Francis Square Cooperative granted Helena permission to add Vladimir to her membership. . . . Helena and Vladimir divorced in 2004. After her divorce from Vladimir, Helena wanted to move to a location with easier accessibility in view of her declining health. On April 6, 2005, the Laguna property was sold with net proceeds of \$307,560.40.

“On March 25, 2005 Helena wrote a letter to Dmitri which states:

“Taking into consideration the agreement made on May 5, 1982 just before our marriage dissolution, I am informing you that I am in the process of negotiating selling the apartment #4 on 1335 Laguna Street, San Francisco that we have purchased together in 1971. After selling it I am planning to move into Western Park Apartment building just across Laguna Street where we lived together for over 11 years.

“By this letter I confirm my obligation to repay you my debt mentioned in our agreement dated May 5, 1982. After receiving the money for the sold apartment (about \$300,000) I will deposit all the money received on my Bank of America account and after my death, as agreed, you should receive my debt in the amount of 50% of my money left on my accounts in this bank.

“The Laguna Street property sold in April of 2005. After the sale, Helena moved across the street to the Western Park Apartments where she lived alone until her death on January 28, 2010. [¶] On December 31, 2009 the amount on deposit in Helena’s Bank of America account was \$204,881.42. . . . [¶] . . . [¶] . . .

“Helena’s Will, executed August 6, 2009, and admitted to probate on June 22, 2010, nominated Vladimir as Executor. Vladimir is now the duly appointed and acting executor of Helena’s Estate. On August 26, 2010, Dmitri filed a Creditor’s Claim in the amount of \$102,440.21 representing 50% of the amount on deposit at Bank of America on December 31, 2009. On October 5, 2010, Vladimir, as executor of the Estate, filed a rejection of the Creditor’s Claim.^[4] . . . On February 1, 2011, Dmitri filed this Probate Code section 850 Petition. [¶] . . .

“Dmitri contends that the May 5, 1982 Deferral Agreement is valid and that he is entitled to 50% of the amount remaining on deposit in Helena’s Bank of America account, the sum of \$102,440.21, plus interest from the date of his August 26, 2010 Creditor’s Claim. He contends the Property Settlement Agreement does not affect or impair the May 5, 1982 Deferral Agreement. Dmitri testified that, at the time of the divorce, he did not want to hurt Helena. He did not retain a lawyer and merely signed all documents Helena brought to him. Dmitri entered into the Deferral Agreement and the Property Settlement Agreement at Helena’s request. He never went to court because he did not want the divorce. [¶] Dmitri claimed that Helena chose the Bank of America as it was their first bank and she worked for the Bank of America. They had a joint account at that time. Dmitri claims that the March 25, 2005 letter . . . reaffirms their agreement that Dmitri was to receive 50% of the remaining proceeds of sale after Helena’s death. Dmitri contends Helena wrote the May 25, 2005 letter when she was going to sell the property as she did not want him to worry about their earlier Deferral Agreement. [¶] Helena continued to work at RussArt after the divorce and they remained friends up until the date of her death. He testified that even after their divorce, they celebrated the anniversary of

⁴ The order describes other proceedings and claims against other parties that were ultimately dismissed and have no bearing on the merits of the issues on appeal.

their marriage every year. . . . After Helena became ill and her health deteriorated, Dmitri visited her every day and was with her when she died. A few days before her death Helena gave Dmitri a copy of the Bank of America statement.

“Vladimir contends he became an owner of the Laguna cooperative apartment in 1996 along with Helena as reflected in [a] September 28, 1998 letter He claimed to have taken over payment of the Homeowner Association dues until the unit was sold in 2005. He did not find out about the Deferral Agreement with Dmitri until eight months after Helena’s death. He further claims the Bank of America account did not exist in 1982.

“Vladimir contends the May 5, 1982 Deferral Agreement . . . and the March 25, 2005 letter. . . are forgeries. He asserts Helena told him there was no agreement regarding the Laguna Street property. He also contends the Property Settlement Agreement attached to the Interlocutory Judgment of Dissolution controls and supersedes the May 5, 1982 Deferral Agreement. Vladimir claims the Laguna Street property was a cooperative and that whoever was on title on the date the mortgage was paid off became the owners. He claims he became an owner of the Laguna Street Property in 1996. Vladimir contends Helena purchased the Laguna Street property and allowed Dmitri to stay in the property free of charge until their divorce.

“The Court finds Dmitri’s testimony regarding the May 5, 1982 Deferral Agreement credible. The Deferral Agreement constitutes a valid written agreement by which Dmitri agreed to move out of 1335 Laguna Street, Apt. #4, San Francisco and to defer payment for his 50% interest in the property until Helena’s death. The Court finds the explanation of the March 25, 2005 letter acknowledging the Deferral Agreement also credible. It provides further proof of Helena’s intent to abide by the May 5, 1982 Deferral Agreement. It confirms her obligation to repay Dmitri the debt arising out of their May 5, 1982 Deferral Agreement. The Court rejects Vladimir’s contention that the May 5, 1982 Deferral Agreement . . . and the March 25, 2005 letter . . . are forgeries.

“The Court finds that the Deferral Agreement should be enforced. Both Agreements were executed on May 5, 1982. The Mutual Property Settlement Agreement

states that Dmitri waives all claims and interest in the Laguna property and will sign all necessary legal papers required when the apartment is sold, without any claim for additional compensation “at that time.” The Deferral Agreement provides that Helena will continue to reside in the Laguna apartment and that upon Helena’s death, 50% of the funds remaining after sale of the property, will go to Dmitri. The two Agreements are not inconsistent. Dmitri agreed in the Mutual Property Settlement Agreement not to assert any interest in the Laguna property and to sign all necessary documents when the apartment was sold, without any claim for additional compensation “at that time”. The Deferral Agreement provides that Dmitri will receive 50% of the proceeds from the sale of the Laguna property upon the death of Helena.

“Dmitri relies upon *Anthony v. Anthony* (1949) 94 Cal.App.2d 507 and *Hawkins v. McLaughlin* (1961) 196 Cal.App.2d 318. In *Anthony*, decedent and his former wife entered into an agreement under which the decedent was to pay his former wife weekly payments of \$35.00 for her lifetime, or until she remarried. After the agreement, the parties obtained a divorce in Nevada. When the husband later died, the executor of his estate refused to continue the weekly payments. The Court of Appeal upheld the enforceability of the weekly payment agreement made prior to the divorce, despite the fact that such agreement was not referred to in the subsequent divorce decree. *Id.* at 509. The Court held the agreement in question was a binding executed contract between the parties in which they settled their property interest upon a basis agreeable to both. “In our opinion it continued to be a legal charge against the estate the same as any other unfilled contractual obligation of decedent at the time of death.” *Id.* at p. 511. The Court held the agreement in question was a binding executed contract between the parties in which they settled their property interest upon a basis agreeable to both. “In our opinion it continued to be a legal charge against the estate the same as any other unfilled contractual obligation of decedent at the time of death.” *Id.* at p. 511.

“In *Anthony, supra*, the pre-divorce agreement contained language that the agreement was to be incorporated into the terms of any future divorce decree. However, the divorce decree itself contained no reference to this term or to the agreement. *Id.* at

p. 510. The Court of Appeal held that the absence of language binding the husband's estate to carry out the agreement did not affect the enforceability of the contract after the husband's death. *Id.* at 512. The Court of Appeal stated:

“Although an order of court for payment of alimony terminates upon the death of either of the parties, such rule is not applicable to an obligation under a contract, where performance consists simply of payment of money and where the personal representatives can sufficiently perform all the deceased could have performed. In such cases, the personal representative of the decedent is bound to fulfill and complete such a contract. *Id.* at 512-513.

“Here, Dmitri and Helena entered into the Deferral Agreement prior to their divorce. Neither the divorce decree nor the Property Settlement Agreement make reference to the Deferral Agreement which Dmitri seeks to enforce. In *Anthony*, the spouses' agreement stated that its terms would be incorporated into the divorce decree, even though the decree made no such reference. The Court of Appeal nevertheless enforced it as a separate contract independent of the spouses' divorce or related settlement provisions. The fact that the Property Settlement Agreement does not mention the Deferral Agreement is not dispositive of the validity of the Deferral Agreement. Both parties performed as promised and the terms are not ambiguous. As in *Anthony* the Deferral Agreement between Dmitri and Helena should be enforced.

“*Hawkins v. McLaughlin*, *supra*, also supports enforcement of the Deferral Agreement. In *Hawkins*, a property settlement agreement was executed by plaintiff and Hawkins, then husband and wife. It provided that husband would pay plaintiff the sum of \$50.00 per month for support and maintenance continuing until death or remarriage of the wife. After the divorce, the husband, Hawkins, died and McLaughlin, the appointed executrix, did not continue the payments. The Court of Appeal held that the former wife and husband were permitted to contract as they pleased, including that the former husband would support the wife beyond that which he was strictly obligated, and upheld the agreement. Here, Dmitri and Helena were free to contract as they pleased and they voluntarily agreed that Dmitri would move out from the apartment and defer payment for his 50 percent interest in the property until Helena's death.

“Accordingly, Dmitri is entitled to 50% of the proceeds from Helena’s Bank of America account, or the sum of \$104,220.41. Dmitri’s request for interest is denied. Dmitri’s Creditor’s Claim filed August 26, 2010 does not seek interest.”

Discussion

Based on the facts found by the probate court, there was no legal error in concluding that the contract under which Helena agreed to pay Dymitri one-half of all money in her bank accounts on the date of her death is enforceable against her estate. The Probate Code specifically authorizes a petition for an order by any interested person “[w]here the decedent while living binds himself or herself . . . by a contract in writing to convey real property or to transfer personal property upon or after his or her death and the contract is one which can be specifically enforced.” (§ 850, subd. (1)(2)(B).) Although the payment was not due until Helena’s death, the Probate Code states that among the written instruments which are “not invalid because the instrument does not comply with the requirements for execution of a will” is “[a] written provision that any property controlled by or owned by the decedent before death that is the subject of the instrument shall pass to a person whom the decedent designates . . . in the instrument” (§ 5000, subds. (a), (b)(3)). The cases cited by the probate court support this conclusion, for which other authority might readily be cited. (See, e.g., 14 Witkin, Summary of Cal. Law (10th ed. 2005) Wills and Probate, §§ 107-108, pp. 173-175.)

Vladimir argues that the 1982 agreement fails to comply with the statute of frauds, Civil Code section 1624, subdivision (a)(1, 5), because the agreement assertedly was not subscribed. However, Vladimir seems to misunderstand the meaning of “subscribed” as used in the statute of frauds. “ ‘To subscribe is to attest or give consent, or evidence knowledge, by underwriting usually (but not necessarily) the name of the subscriber. But the place of the writing is immaterial, since a still more general meaning of the word “subscribe” is to attest by writing, in which definition the locality is wholly disregarded.’ ” (*California Canneries Co. v. Scatena* (1897) 117 Cal. 447, 450.) The 1982 written agreement is included in the record. It appears to be signed by Helena and the probate court found that Helena’s signature was not a forgery. The signature attests to

Helena's acceptance of the agreement, which therefore was "subscribed" and in compliance with the statute of frauds.

Although the court thus correctly held that Helena's agreement with Dymitri is enforceable, the clerk's transcript does contain documents indicating that the dispute between Dymitri and Vladimir is somewhat more complicated. The record contains documentation showing that as of January 8, 1997, Helena and Vladimir were the owners of the property at 1335 Laguna Street. The record also includes an agreement entered between Helena and Vladimir when they divorced, dated February 4, 2003. The 2003 agreement, apparently prepared without the assistance of counsel, recites that Helena and Vladimir "agree that they will jointly own interest in their residence, located in 1335 Laguna Street, Apt. #4, San Francisco, CA 94115, at Saint Francis Square Cooperative, Inc. [They] further stipulate that upon sale of this property, said real estate will be divided its net profit into equal shares." Under the heading "Community Property" they "agree that on the date of this agreement we owned the following community property . . . : Apartment located at 1335 Laguna Street, Apt. #4, San Francisco, CA 94115." And under the heading "Family Home," the agreement provides: "Both parties shall continue their joint ownership of the family home and real property in 1335 Laguna Street, Apt. #4, San Francisco, CA 94115. [They] shall be entitled to reside in said family home and shall have exclusive custody of said family home until it is sold. [¶] Upon the sale of the family home, the sale proceeds shall first be applied toward costs of sale and payment of the deed (s) of trust. Thereafter, the remaining sale proceeds shall first be applied toward the payment of any reimbursements due Vladimir Privalov for repairs. Thereafter the remaining sale proceeds shall be divided equally between the parties."

Despite this agreement between Helena and Vladimir, it appears from the record that when the Laguna Street property was sold in April 2005, the full amount of the proceeds, \$307,560.40, were deposited into Helena's account at Bank of America. The register of actions reflects that in October 2010, Vladimir filed his own creditor's claim against the estate for \$153,780.20. Vladimir's appellate brief argues that if Dymitri's

claim is enforced, there will be insufficient funds in the estate to pay his claim.⁵ The record does not disclose what action, if any, has been taken in the probate proceedings to consider the merits of Vladimir's claim and any defenses thereto, or to determine the relative priority of the claims if the estate does not have sufficient funds to pay all valid claims. No such issues are raised in the present appeal. Although we conclude that Dymitri's claim was properly determined to be valid and enforceable, we express no opinion on such other issues as may properly be raised in subsequent proceedings.

Finally, Vladimir asserts there is a discrepancy between that portion of the order before us that states that Dymitri is not entitled to interest on his claim for \$102,440.21 and the conclusion in the order stating that he should recover \$104,220.41. We assume that the \$1,780.20 difference is the amount by which Helena's Bank of America account increased between December 31, 2009 and January 20, 2012, the date of the order from which the appeal is taken. If this is not correct, the court may adjust the precise amount due Dymitri when the matter returns to the probate court.

⁵ Nor will there be any residue of the estate, which Helena's will, executed on August 6, 2009, provides should be divided among several persons, including 40 percent to Vladimir and 20 percent to Dymitri. The will makes no reference to the Laguna Street property or to the proceeds from its sale.

Disposition

The January 20, 2012 order is affirmed insofar as it holds that the May 5, 1982 Deferral Agreement between Helena and Dymitri is a valid and enforceable agreement that Vladimir, as executor of Helena's estate, is bound to recognize. We express no opinion concerning the validity of other claims against the estate or of the relative priority of valid claims that exceed the corpus of the estate.

Pollak, J.

We concur:

McGuinness, P. J.

Jenkins, J.