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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT

Estate of ROBERT WARREN FANSLER,  
Deceased.

HILDA GARZON-AYVAZIAN,

Petitioner and Appellant,

v.

BARBARA STETTNER et al.,

Objector and Respondent.

F069736

(Super. Ct. No. 13CEPR00399)

**OPINION**

APPEAL from a judgment of the Superior Court of Fresno County. Robert H. Oliver, Judge.

Hilda Garzon-Ayvazian, in pro. per., for Petitioner and Appellant.

McCormick, Barstow, Sheppard, Wayte & Carruth, Robert L. Sullivan, Jr. and Nikole E. Cunningham for Respondent Barbara Stettner.

Dowling Aaron and Lynne Thaxter Brown for Respondent Robert B. Fleming.

Appellant Hilda Garzon-Ayvazian, an attorney, filed a petition in Fresno County for probate of a will executed in Mexico by a decedent who was domiciled in Arizona at the time of his death. The trial court denied the petition, finding it had no jurisdiction because the decedent did not leave any property in California.

The decedent held three promissory notes secured by deeds of trust on property located in California. Garzon-Ayvazian contends these notes should be treated as property left in the state for purposes of probate administration.

We grant respondents' motions to take judicial notice of (1) documents filed in the probate case for the decedent's estate in Arizona state court and (2) relevant Arizona statutes. We affirm. We conclude the promissory notes are located in Arizona, not California, for purposes of probate administration, and, even if the notes could be deemed property left in California, the trial court did not abuse its discretion by declining to open ancillary probate in the circumstances of this case.

### **BACKGROUND**

In June 2006, Robert W. Fansler executed a last will and testament in Los Banos, California (2006 will). In the 2006 will, Fansler named his sister, Donna Jean Broussard, his daughter, respondent Barbara Stettner, and his friend, Geraldine May Guthrie, as his beneficiaries and nominated Guthrie as the executor.

In June 2011, Fansler apparently signed another will in Mazatlan in the State of Sinaloa, Mexico (Mexican will). In the Mexican will, Fansler named his wife Ramona Rios Rodriguez<sup>1</sup> as his sole beneficiary.

On November 24, 2011, Fansler died in Rio Rico, Arizona. Fansler was a resident of Arizona at the time of his death.<sup>2</sup>

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<sup>1</sup> Garzon-Ayvazian asserts in her opening brief that Fansler married Rios Rodriguez in 2009 in Mexico. In the 2006 will, Fansler declared that he was not currently married.

<sup>2</sup> The parties agree that Fansler was domiciled in Arizona at the time of his death. Garzon-Ayvazian asserts Fansler was also a resident of Mazatlan, Mexico at the time of his death.

### ***Arizona probate proceedings***

In January 2012, Guthrie submitted to the superior court in Santa Cruz County, Arizona, an application for informal probate of will and appointment of personal representative, initiating *In the Matter of the Estate of Robert W. Fansler*, No. PB 12-001 (Arizona probate case). Guthrie sought probate of the 2006 will.

In March 2012, Garzon-Ayvazian filed, on behalf of Rios Rodriguez, a petition for appointment of personal representative and formal probate of will and a petition for removal of personal representative in the Arizona probate case.<sup>3</sup> Rios Rodriguez relied on the Mexican will.

Guthrie and Stettner objected to Rios Rodriguez's petition. In June 2012, the parties "entered into a stipulation to protect the assets of the estate pending outcome of the litigation." Specifically, the parties stipulated to a court order that appointed respondent Robert Fleming special administrator for the estate pursuant to Arizona Revised Statutes (ARS) section 14-3614. Fleming's acceptance of appointment as special administrator was filed on August 2, 2012.

At issue in the Arizona probate case was the validity of the Mexican will. In May 2013, Stettner filed a "motion for summary judgment as to admissibility of 2011 purported will" (i.e., the Mexican will). (Capitalization omitted.) She argued that, under Arizona law, a foreign will must be valid under the laws of the foreign place, but the Mexican will was not valid under the laws of the State of Sinaloa. Rios Rodriguez opposed the motion and filed her own cross-motion for summary judgment.

On July 31, 2013, the Arizona trial court ruled the Mexican will was invalid and had no bearing on the 2006 will and further, "the Mexican judgment from Mazatlan,

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<sup>3</sup> Garzon-Ayvazian is an attorney licensed to practice in California. The record indicates that she is not licensed to practice in Arizona and that the petition was rejected sua sponte by the Arizona trial court as unauthorized practice of law. An Arizona-licensed attorney filed another petition on behalf of Rios Rodriguez in May 2012.

Mexico will not be given full faith and credit.” The court did, however, recognize Fansler’s marriage to Rios Rodriguez, finding that she was an “omitted spouse pursuant to A.R.S. §14-2301.”<sup>4</sup>

### ***Mexico proceedings***

The Arizona trial court referred to a “Mexican judgment.” According to papers filed by Garzon-Ayvazian, while the Arizona probate case was pending, the Mexican will was also the subject of a court action in Mexico.

In November 2012, Garzon-Ayvazian filed, on behalf of Rios Rodriguez, a “notice of probate of will of decedent in Mazatlan, Sinaloa, Mexico” in the Arizona probate case. (Capitalization omitted.) The notice provided, “the Will of Decedent dated June 16, 2011 is currently being probated in Mazatlan, Sinaloa, Mexico under Case Number 1934/2012 in the Juzgado Segundo de lo Familiar (Second Family Law Court).”

On March 11, 2013, Garzon-Ayvazian filed a notice in the Arizona probate case informing the parties that a hearing to determine the validity of the Mexican will would be held on April 9, 2013, at 12:30 p.m. in the Second Family Law Court in Mazatlan, Mexico.

In the instant case, on September 11, 2013, Garzon-Ayvazian filed a “certified copy of order for probate in Mexico.” Garzon-Ayvazian asserted that the attached document was “the Order for Probate entered in the probate proceedings in Mazatlan, Sinaloa, Mexico wherein the Will of June 16, 2011, was found to be valid, admitted to probate and named the surviving spouse of the decedent Ramona Rios Rodriguez as his

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<sup>4</sup> Under ARS section 14-2301, when a testator marries after executing a will, subject to certain exceptions, the surviving spouse generally is entitled to “an intestate share that is not less than the value of the share of the estate the spouse would have received if the testator had died intestate as to any portion of the testator’s estate that neither is devised to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse nor is devised to a descendant of that child . . . .” Thus, even under the 2006 will, it appears that Rios Rodriguez is entitled to a share of Fansler’s estate in Arizona.

only heir pursuant to the Will.” The attached document indicated that the Mexican court order was made on April 9, 2013.

### **PROCEDURAL HISTORY**

On May 10, 2013, after Stettner filed for summary judgment in the Arizona probate case but before the Arizona court ruled, Garzon-Ayvazian initiated the case underlying this appeal. She did so by filing, in propria persona, in Fresno County Superior Court a petition for probate of will and authorization to administer under the Independent Administration of Estates Act (IAEA).

Garzon-Ayvazian requested that the Mexican will be admitted to probate and that she be named administrator with will annexed. She alleged Fansler was a nonresident of California who left an estate in Fresno County described as a “Note secured by deed of trust, property located at 1935 Tri Circle Drive, Firebaugh, CA 93622.” The petition did not mention the pending Arizona probate case, the appointment of Fleming as a special administrator in Arizona, the existence of the 2006 will, or the fact that the validity of the Mexican will was disputed by Stettner.

On June 20, 2013, Fleming filed an objection to the petition. He asserted he was an interested person because he was the duly appointed special administrator of Fansler’s estate in the pending Arizona probate case and his duty was “to hold and preserve the estate assets and to do whatever was needful and necessary to protect the assets of the estate during the pendency of the other proceedings before the [Arizona] court.” Fleming explained that the principal issue in the Arizona probate case was whether the Mexican will was valid but that he, as special administrator, was not an active participant in the Arizona litigation between Rios Rodriguez and the beneficiaries under the 2006 will.

Fleming further alleged that Fansler’s estate owned no real property in the State of California. At the time of his death, Fansler did hold three promissory notes secured by deeds of trust to three separate parcels of real property located in California (two parcels in Calaveras County and one in Fresno County), and these notes were being administered

in the estate.<sup>5</sup> However, Fleming alleged, “The potential possessory rights as on any of the three properties involved have not accrued into rights of possession; thus, [Fansler’s] estate holds no ‘ownership’ interest in the three properties other than a contingent beneficial interest in them as security for the notes.”

In a reply to Fleming’s objection, Garzon-Ayvazian alleged Fleming was not an “interested person” within the meaning of Probate Code section 48.<sup>6</sup> She also argued that a deed of trust is an interest in real property “that has situs in California.” (Capitalization omitted.) In September 2013, the trial court found that Fleming was an “interested person.”

On September 6, 2013, Fleming filed a petition for ancillary letters of special administration, which Garzon-Ayvazian objected to.

On November 6, 2013, Garzon-Ayvazian filed an ex parte petition for letters of special administration and authorization to administer under the IAEA. This petition identified both the 2006 will and the Mexican will, and requested that both Garzon-Ayvazian and Guthrie be appointed special administrators with general powers.

On December 30, 2013, Stettner filed an objection to Garzon-Ayvazian’s petition for probate and a motion to dismiss. She argued the petition should be dismissed for lack of subject matter jurisdiction because Fansler was a nondomiciliary of California and he left no property in California at the time of his death. Stettner asserted the secured promissory notes were items of transitory personal property with their situs in Santa Cruz County, Arizona. She further argued that, even if the trial court had subject matter

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<sup>5</sup> An inventory prepared by Fleming in the Arizona probate case and dated November 20, 2012, lists three loans associated with real property in California as “property owned by the decedent as of date of death.” One loan is described as “APN#008-072-05 LOT 5 & 6, Property in Fresno, County loan to Perez, owes approximately \$10,000 in taxes since 2005” with an unknown value. The other loans are described in the inventory as “West Point, CA 56 acres loan to Moore” with a net value of approximately \$400,000 and “West Point, CA 40 acres loan to Reuter” with a net value of approximately \$225,000.

<sup>6</sup> Further statutory references are to the Probate Code unless otherwise noted.

jurisdiction, it should abate the proceeding in deference to Arizona's preceding exercise of jurisdiction and because "[t]he instant action is neither necessary nor proper and was only brought by [Garzon-Ayvazian] in an effort to forum shop and avoid the ruling of the Arizona court [that the Mexican will is not valid]."

On March 17, 2014, the trial court heard argument on the Garzon-Ayvazian's petition for probate and Fleming's petition for letters of special administration and took the matter under submission. On March 28, 2014, the court issued its ruling, denying both petitions.

The court observed that different courts have come to "various and divergent conclusions" on the subject of whether a secured promissory note should be treated as personal property or an interest in real property. The court also took into account the preexisting Arizona probate case:

"[T]he Arizona court has *already ruled* ... that the Mexican Will was invalid .... Ms. Garzon-Ayvazian disputes that this ruling has any claim- and/or issue-precluding effects, but the fact remains that this court cannot consider whether to grant ancillary probate without considering the context, and it must give the Arizona court's ruling great weight in making its decision today.... In short, the court is extremely reluctant to ... admit[] a Will to probate that has been found by a court in another jurisdiction to be invalid, or (alternately) setting up a situation where a *second* Will contest will be litigated in this jurisdiction, *especially* where there is more than sufficient rationale ... to find that ancillary probate (even of a clearly valid Will) *is not warranted where the decedent left no property in this State*. 'The probate court has jurisdiction to refuse to grant probate and letters of administration where no useful purpose would be served thereby.' (*In re Glassford's Estate* (1952) 114 Cal.App.2d 181, 191 [*Glassford*]), citing to *In re Daughaday's Estate* (1914) 168 Cal. 63, 73.)" (Fn. omitted.)

The court then found the promissory notes secured by deeds of trust on property in California did not create an "estate" in California; "It is the location of the Note and not the location of the security for the Note that determines where probate administration is authorized." (Underscoring omitted.) The court concluded:

“[T]he Deeds of Trust do not create an ‘interest in land’ in California sufficient to confer jurisdiction over the decedent’s estate *absent the need to foreclose on the real property or otherwise commence or defend litigation concerning the Deeds of Trust*. Clearly if litigation or judicial or nonjudicial foreclosure is necessary, then ancillary administration will be necessary. [Citations.]

“But short of that, if the Arizona representative is in possession of the Notes, and they were not located in this State at decedent’s death ... then they are not subject to probate in this state. [Citation.] Furthermore, since the Notes were located in Arizona and have been inventoried in the Arizona probate, the personal representative’s receipt of payments on the notes is proper. [Citation.] [¶] The court cannot find at this juncture that the decedent’s interest in three Deeds of Trust recorded against California real property provide a sufficient basis to require ancillary probate administration, where the Notes were not located in this State at decedent’s death.”<sup>7</sup>

In addition, the trial court noted that Fleming did not indicate there was any current need for letters of special administration.

Notice of entry of judgment was filed on April 8, 2014, and Garzon-Ayvazian filed a notice of appeal on May 27, 2014.

## **DISCUSSION**

### ***I. Fleming is an “interested person”***

Garzon-Ayvazian contends that Fleming, as appointed special administrator in the Arizona probate case, has no standing to object to her petition for probate in Fresno County because he is not an “interested person” under section 48. We are not persuaded.

Pursuant to section 1043, an “interested person” may appear in a probate action and make a response or object in writing or orally at a hearing. (§ 1043, subs. (a) & (b).) Section 48, subdivision (a)(2), provides that an “interested person” includes

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<sup>7</sup> The court also rejected Garzon-Ayvazian’s claim that other personal property (automobiles and construction material) located in California conferred jurisdiction. Garzon-Ayvazian does not challenge this finding on appeal.

“[a]ny person having priority for appointment as personal representative.” Further, “[t]he meaning of ‘interested person’ as it relates to particular persons may vary from time to time and shall be determined according to the particular purposes of, and matter involved in, any proceeding.” (*Id.*, subd. (b).) Section 48 “permits the court to designate as an interested person anyone having an interest in an estate which may be affected by a probate proceeding. Subdivision (b) allows the court to determine the sufficiency of that party’s interest for the purposes of each proceeding conducted. Thus, a party may qualify as an interested person entitled to participate for purposes of one proceeding but not for another.” (*Estate of Davis* (1990) 219 Cal.App.3d 663, 668.)

“Because the determination of whether a party is an interested person pursuant to ... section 48 is subject to the probate court’s discretion, we apply the deferential abuse of discretion standard in reviewing the determination.” (*Estate of Prindle* (2009) 173 Cal.App.4th 119, 126.)

In California, “[i]f the decedent dies while domiciled in a sister state, a personal representative appointed by a court of the decedent’s domicile has priority over all other persons except where the decedent’s will nominates a different person to be the personal representative in this state.” (§ 12513.)

Here, Fleming was appointed special administrator in Arizona, Fansler’s domicile. Under both California and Arizona law, “[p]ersonal representative” is defined to include a “special administrator.” (§ 58; ARS § 14-1201 (40).) Thus, Fleming has priority to be the personal representative in California because, as a special administrator in the Arizona probate case, he is a personal representative appointed by a court in the decedent’s domicile. (§ 12513.) As a result, he is an interested person under section 48, subdivision (a).

In addition, Fleming’s duty as special administrator is “to hold and preserve the estate assets and to do whatever [i]s needful and necessary to protect the assets of the estate during the pendency of the other proceedings before the court.”

Garzon-Ayvazian’s petition for probate in California had the potential to result in administration of the estate’s promissory notes in California under the Mexican will, contrary to the determination in the Arizona probate case that the Mexican will is invalid. Given that Fleming is already administering the promissory notes as part of Fansler’s estate in Arizona, we see no abuse of discretion in the trial court recognizing Fleming as an interested person so that he could object to Garzon-Ayvazian’s petition in California.<sup>8</sup>

## ***II. The decedent did not leave property in California***

“Generally speaking, a will should be submitted in the first instance to the forum at the domicile of the testator. But in California a probate court may acquire jurisdiction over the estate of a deceased person in either of two situations: the domicile of such person within the state, or the presence of assets within the state.” (*Estate of Estrem* (1940) 16 Cal.2d 563, 566-567.) When an interested party files a petition for probate in California, the “jurisdictional fact[.]” that either “the decedent was domiciled in this state or [the decedent] left property in this state at the time of death” must be established in order for the court to exercise jurisdiction over the matter. (§§ 8000, 8005, subd. (b)(1)(B).) “It is generally recognized that each state is invested with plenary power to regulate the administration of the estates of deceased persons, so far as the property of such persons physically situated within its borders is concerned.” (*Glassford, supra*, 114 Cal.App.2d at p. 188.)

In this case, the parties do not dispute that Fansler was not domiciled in California at the time of his death. Therefore, the trial court could exercise jurisdiction only if Fansler “left property” in California for purposes of section 8005. Since Fansler was domiciled in Arizona at the time of his death, the Arizona probate case is the “primary,” “original,” or “domiciliary” probate, and probate in any other state would be referred

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<sup>8</sup> We conclude the trial court acted within its discretion under California law, and Garzon-Ayvazian’s citation to out-of-state authority is not persuasive.

to as “ancillary administration.” (Ross & Cohen, Cal. Practice Guide: Probate (The Rutter Group 2014) ¶¶ 14:290 et seq.)<sup>9</sup>

Under section 62, “[p]roperty” means anything that may be the subject of ownership and includes both real and personal property and any interest therein.” The parties agree the promissory notes are property, but disagree on where the notes are located. Garzon-Ayvazian contends Fansler left property in California because the promissory notes have their situs in California and the deeds of trust are property interests in California. The trial court, however, found the notes were located in Arizona, based on the fact the notes were physically located in Arizona and had been inventoried in the Arizona probate case.

In *Estate of Layton* (1933) 217 Cal. 451, 463 (*Layton*), cited by Stettner, the court recognized “the general rule that intangible property ... has its situs for all purposes, including administration, in the domicile of the decedent ....” If we view the promissory notes as intangible property, then under *Layton*, they are located in Arizona, Fansler’s domicile.

Stettner also suggests the promissory notes may be treated as a “form of negotiable instrument.” (*Saks v. Charity Mission Baptist Church* (2001) 90 Cal.App.4th 1116, 1132.) Under this view, the situs of the promissory notes is where the documents are physically located, which, again, is Arizona. (Ross & Cohen, Cal. Practice Guide: Probate, *supra*, ¶ 14:362.)

Garzon-Ayvazian, on the other hand, argues the situs of the debt (embodied by the promissory notes) is the domicile of the debtor because it may be necessary to sue the debtor there. Garzon-Ayvazian relies upon *Estate of Waits* (1944) 23 Cal.2d 676, 680

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<sup>9</sup> “Ancillary administration is usually narrower in scope and more abbreviated than an original (or ‘primary’) estate administration. An ancillary administrator generally collects those assets of decedent within the state, pays local creditors and then, under court order, typically transfers the remaining property to the out-of-state representative administering the primary probate ....” (Ross & Cohen, Cal. Practice Guide: Probate, *supra*, ¶ 14:293.)

(*Waits*), in which the court observed, “a debt will be regarded as an asset wherever the debtor is subject to suit.” In that case, an administrator for the estate of an out-of-state decedent petitioned for letters of administration in California in order to prosecute a claim against a railroad for the wrongful death of the decedent. (*Id.* at pp. 677-678.) The court explained that intangible property, such as cause of action for wrongful death, “has no physical characteristics that would serve as a basis for assigning it to a particular locality.” (*Id.* at p. 680.) Instead, “[t]he location assigned to it *depends on what action is to be taken with reference to it.* It has therefore been widely held that a debt has its situs at the domicile of the debtor for purposes of administration, since it may be necessary to sue him there and to have an administrator appointed to bring suit.” (*Ibid.*, italics added.) The court held the cause of action for wrongful death had a situs in California (specifically, Alameda County) because the railroad was subject to suit there. Because the cause of action was an asset of the estate, there was property left in California and the petition for letters of administration was properly granted. (*Id.* at pp. 678, 681.)

In *Waits*, the court reasoned that the location of intangible property “depends on what action is to be taken with reference to it.” (*Waits, supra*, 23 Cal.2d at p. 680.) Here, Fleming, as special administrator of Fansler’s estate, has inventoried the promissory notes and is administering them as part of the estate in Arizona. The trial court correctly observed that Fleming may receive payments from the debtors without need for ancillary administration in California. (See *McCully v. Cooper* (1896) 114 Cal. 258, 261 [“Where there are no debts owing by the estate in the jurisdiction where the foreign debtor resides, and no ancillary administration has been granted there, the principal administrator may, in such foreign state, receive a voluntary payment from the debtor, which will be a good acquittance to him, even if an ancillary administrator should be subsequently appointed.”].) If the only “action ... taken with reference” to the notes is Fleming’s collection of payments on the notes, the notes may be viewed as located in Arizona even under *Waits*. (*Waits, supra*, at p. 680.)

The parties have offered three potential tests for determining the location of the promissory notes—where their owner is domiciled, where the promissory notes are physically located, and where the debtors on the notes are subject to suit.<sup>10</sup> Since use of either of the first two tests results in the promissory notes being located in Arizona, we need not choose between them. However, we do have to choose between Arizona and California, which we will assume for the sake of argument is the place where the debtors are subject to suit.

Between the competing claims of Arizona and California as situs of the notes for probate administration purposes, we conclude the location of the promissory notes is more appropriately assigned to Arizona. Garzon-Ayvazian’s argument that California should be the situs of the notes is premised solely on the fact that the debtors will be subject to suit in California if an action for enforcement of the notes must be filed. The trial court, however, noted that Fleming has not indicated there is any current need for letters of special administration. In other words, Fleming does not believe an enforcement action in California is necessary to preserve the assets of Fansler’s estate. Weighed against the possibility of an enforcement action in California on the notes are the facts that (1) the notes’ owner was domiciled in Arizona at the time of his death, (2) the notes are physically located in Arizona, and (3) receipt of payments on the notes by the special administrator of the estate occurs in Arizona. Under these circumstances, the trial court properly determined that the promissory notes are located in Arizona, not California, for probate administration purposes.

The fact that the promissory notes are secured by deeds of trust does not change our conclusion. “[D]eeds of trust, except for the passage of title for the purpose of the trust, are practically and substantially only mortgages with a power of sale....” [Citation.]

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<sup>10</sup> We note that, while Garzon-Ayvazian assumes the debtors (the payors on the notes, Perez, Moore, and Reuter) are domiciled in California, she has not cited any evidence to establish this as a fact. The promissory notes do not appear to be part of the record on appeal.

In practical effect, if not in legal parlance, a deed of trust is a lien on the property.” (*Monterey S.P. Partnership v. W. L. Bangham, Inc.* (1989) 49 Cal.3d 454, 460.) “[T]he trustor-debtor *retains all incidents of ownership* with regard to the real property, including the rights of possession and sale.” (*Jenkins v. JPMorgan Chase Bank, N.A.* (2013) 216 Cal.App.4th 497, 508, italics added.) The deeds of trust, like the promissory notes, may be viewed as intangible property with their location determined by their owner’s domicile (Arizona) or tangible property with a physical location in Arizona. Certainly, if the trustee or beneficiary sought to foreclose on one of the California properties, the deed of trust would be construed as located in California based on the “action ... taken with reference to it.”<sup>11</sup> (*Waits, supra*, 23 Cal.2d at p. 680; Code Civ. Proc., § 1913; see *Taylor v. Taylor* (1923) 192 Cal. 71, 76 [“That the courts of one state cannot make a decree which will operate to change or directly affect the title to real property beyond the territorial limits of its jurisdiction must be conceded.”].) But, here, Fleming did not indicate that foreclosure was necessary in order to administer the promissory notes secured by deeds of trust.<sup>12</sup>

Garzon-Ayvazian argues the deeds of trust are property in California, relying on *Estate of Moore* (1955) 135 Cal.App.2d 122, 132 (*Moore*), in which the Court of Appeal observed: “Though the trust deed has been analogized to a mortgage ..., it still remains true that the title does not pass to the buyer but rests in the trustee for the primary benefit

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<sup>11</sup> The trial court recognized this, noting, “Clearly, if litigation or judicial or nonjudicial foreclosure is necessary, then ancillary administration will be necessary.”

<sup>12</sup> Garzon-Ayvazian asserts in her opening brief that the two deeds of trust on property in Calaveras County will need to be foreclosed on because the debtors have not made a payment since before November 2011 and property taxes have not been paid for five years. However, she offers no citation to the appellate record to support this assertion. Further, the trial court noted that, if Fleming were not performing his duties as special administrator (i.e., he is failing to protect the value of the promissory notes), that issue should be raised in the Arizona probate case. Garzon-Ayvazian says in the opening brief that Fleming made the tax payment to avoid a tax sale.

of the seller. And any rule that rests upon the assumption that the holder of a trust deed note does not have any interest in the land finds no substantial basis in California law.” In other words, a deed of trust represents an interest in land. *Moore*, however, presented the question whether the sale of property by the decedent for a note and trust deed during the decedent’s lifetime resulted in ademption of the devise of that property. (*Id.* at pp. 127-128.) The case did not involve a determination of the situs of a deed of trust securing a promissory note, and, more specifically, the case says nothing about choosing between two states that have a potential interest in administering a promissory note secured by a deed of trust in probate proceedings. For this reason, *Moore* is not particularly relevant to our case.

### ***III. The trial court did not abuse its discretion by denying the petition***

Finally, we conclude the trial court did not abuse its discretion by declining to open ancillary administration even if the promissory notes secured by deeds of trust are deemed property left in California. Section 8006, subdivision (a), provides in part: “If the court finds that the matters referred to in paragraph (1) of subdivision (b) of Section 8005 are established, the court shall make an order determining the time and place of the decedent’s death and the jurisdiction of the court. *Where appropriate* and on satisfactory proof, the order shall admit the decedent’s will to probate and appoint a personal representative.” (Italics added.) Thus, the trial court must determine both that the jurisdictional facts are established and that administration in California is “appropriate” in order to open probate.

In *Estate of Daughaday*, *supra*, 168 Cal. at pages 71–72, the California Supreme Court explained:

“[T]he court in probate has a real discretion in the matter of granting or refusing to grant letters testamentary or of administration. That discretion actually exists. True it is that in the vast majority of cases where such application is made, no occasion for its exercise arises, for in the vast majority of cases there are substantial interests to be subserved by

administration. Creditors are to be paid, heirship determined, distributive shares fixed, construction of wills had, all resulting in the final decree of distribution, which affords a most valuable and conclusive muniment of title. So it may be said that the probate court will always grant such letters *where administration is either necessary or advisable or desirable. But it will not grant them, in its discretion, where the purpose to be accomplished can be as well or better attained in another forum.*” (Italics added.)

In the present case, the trial court recognized its discretionary authority to ““refuse to grant probate and letters of administration where no useful purpose would be served thereby.”” The court went on to observe that the promissory notes at issue were located in Arizona and receipt of payments in Arizona was proper. Thus, administration of the promissory notes, short of foreclosing on the property, could be accomplished in another forum (Arizona). The court acknowledged that the result would be different if foreclosure of California property were to become necessary, but it implicitly determined that foreclosure was not necessary “at this juncture.” Under these circumstances, it was not an abuse of discretion for the court to determine that ancillary administration in California was not necessary.

**DISPOSITION**

Respondents’ separate motions to take judicial notice are granted. The judgment is affirmed. Respondents are awarded costs on appeal.

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KANE, J.

WE CONCUR:

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HILL, P.J.

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FRANSON, J.