IN THE SUPREME COURT OF THE STATE OF NEVADA

SUPERPUMPER, INC.; EDWARD BAYUK, individually and as Trustee of the EDWARD WILLIAM BAYUK LIVING TRUST; SALVATORE MORABITO; and SNOWSHOE PETROLEUM, INC., Appellants,

v.

WILLIAM A. LEONARD, Trustee for the Bankruptcy States of Paul A. Morabito, Respondent

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Supreme Court No. 79355

Appeal from the Second Judicial District Court, the Hon. Connie J. Steinheimer Presiding, Case No. CV-13-02663

RESPONDENT'S AMENDED ANSWERING BRIEF

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1 and must be disclosed. These representations are made in order that the justices may evaluate possible disqualification or recusal.

1. Respondent William A. Leonard ("Trustee"), Chapter 7 Trustee of the Bankruptcy Estate of Paul A. Morabito, is the Plaintiff in the subject Case No. CV-13-02663 (the "Case") filed in the Second Judicial District Court in Washoe County, Nevada (the "District Court"). Trustee is an individual and, as such, there are no parent corporations or publicly held companies with more than 10% stock to disclose.

Trustee is represented in this litigation by the law firm of Garman Turner Gordon LLP and was previously represented by the law firm of Gordon Silver. No other law firm has appeared on Trustee's behalf in the District Court or herein.

Dated this 27th day of August 2020.

GARMAN TURNER GORDON LLP

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Trustee, by and through counsel, Garman Turner Gordon LLP, hereby answers *Appellants' Amended Opening Brief* ("Appellants' Brief")[1] filed by Superpumper, Inc. ("Superpumper"), Edward Bayuk, individually and as Trustee of the Edward William Bayuk Living Trust (collectively, "Bayuk"), Salvatore "Sam" Morabito ("Sam"), and Snowshoe Petroleum, Inc. ("Snowshoe," and together with Superpumper, Bayuk, and Salvatore, the "Appellants").

I. JURISDICTIONAL STATEMENT

This is an appeal from the *Findings of Fact, Conclusions of Law, and Judgment* (the "Judgment"), entered on March 29, 2019 by the Honorable Connie Steinheimer, as well as the (1) *Order Denying Defendants' Motions for New Trial and/or to Alter or Amend Judgment;* (2) the *Order Granting in Part and Denying in Part Motion to Retax Costs*; and (3) the *Order Granting Plaintiff's Application for an Award of Attorneys' Fees and Costs Pursuant to NRCP 68*, each signed on July 9, 2019 by the Honorable Connie Steinheimer. The appealability of these orders is not disputed.

Appellants also make reference to other orders in their appendix and Appellants' Brief: (1) the *Order Denying Morabito's Claim of Exemption*; (2) the *Order Denying Bayuk's Claim of Exemption and Third Party Claim*; or (3) the *Order Denying Defendants' Motion to Make Amended or Additional Findings Under NRCP*

[1] Appellants' Brief will be cited as "Appellants' Br."

52(b), or in the Alternative, Motion for Reconsideration and Denying Plaintiff's Countermotion for Fees and Costs Pursuant to NRS 7.085 (collectively, the "Exemption Orders"), which are orders denying claims of exemption asserted by Bayuk and Sam in post-judgment enforcement proceedings. The Exemption Orders were the subject of a separate appeal that was dismissed.[2] Accordingly, the Exemption Orders are not properly the subject of Appellants' appeal.[3]

II. ROUTING STATEMENT

Trustee agrees that the Supreme Court should retain this appeal. This appeal is not presumptively assigned to the Court of Appeals as the Judgment far exceeds the $250,000 threshold. *See* NRAP 17(b)(5). Further, the Supreme Court has already heard motions in this appeal. However, as further set forth below, Trustee does not agree that Appellants have presented any issues of first impression.

III. STATEMENT OF THE ISSUES

As the Judgment was based on extensive factual findings and credibility determinations following an eight-day bench trial, the District Court is afforded substantial deference on her conclusions that the fraudulent transfers at issue (the

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[2] *See* Respondents' Appendix ("Resp. Appx."), 1 Resp. Appx. 001-004, Order *Dismissing Appeal and Regarding Motions* (denying consolidation and dismissing the appeal for this Court's lack of appellate jurisdiction).

[3] The Exemption Orders were not the subject of the Appellants' notice of appeal, but as Appellants' Brief refers generally to "interlocutory orders" in the Jurisdictional Statement and includes the Exemption Orders in the Appellants' Appendix ("AA"), Trustee raises this argument to avoid waiver.

"Transfers") were actually fraudulent under NRS 112.180(a)(1), as made with intent to hinder, delay, or defraud; that the Transfers were constructively fraudulent under NRS 112.180(a)(2), as reasonably equivalent value was not exchanged for the Transfers and the transferor was left with insufficient assets to even meet his basic expenses; and that Appellants did not establish a defense under NRS 112.210 or NRS 112.220(1) or (4).[4]

Unable to meet their burden to show that the District Court's findings were clearly erroneous or that it abused its discretion, Appellants attempt to reframe the Case entirely, identifying as issues on appeal two issues raised for the first time not only after entry of the Judgment, but after Appellants' post-trial motions were submitted and decided. Despite having waived these arguments, Appellants define the issues on appeal as: (1) whether the District Court lacked jurisdiction over the Case due to an alleged failure to obtain specific authorization to commence the Case from the Bankruptcy Court (the "First Issue"); and (2) whether the District Court lacked jurisdiction over the Bayuk Trust as no *in rem* action was filed against it and

[4] *Yamaha Motor Co., U.S.A. v. Arnoult*, 114 Nev. 233, 238, 955 P.2d 661, 664 (1998) ("Nevada appellate courts are 'not at liberty to weigh the evidence anew, and where conflicting evidence exists, all favorable inferences must be drawn towards the prevailing party.'") (citing *Smith v. Timm*, 96 Nev. 197, 202, 606 P.2d 530, 532 (1980)); *Sportsco Enterprises v. Morris*, 112 Nev. 625, 629, 917 P.2d 934, 936 (1996) (clearly erroneous standard applies to district court's findings of fact in action under Nevada's Uniform Fraudulent Transfer Act).

the Bayuk Trust was purportedly a spendthrift under NRS Chapter 166 (the "Second Issue").

The sole issue raised by Appellants which has not been waived is whether the District Court, following a decision from the Bankruptcy Court, properly admitted communications for which the attorney-client privilege had been waived (the "Third Issue"). Substantively, these are the only three issues raised on appeal.

IV. STATEMENT OF THE CASE AND SUMMARY OF THE ARGUMENT

After three years of litigation, in September 2010, Judge Adams determined that Paul Morabito ("Morabito") defrauded Jerry Herbst, JH, Inc., and Berry-Hinckley Industries (the "Herbst Parties"), and awarded damages against Morabito in the amount of $149,444,777.80.[5] Subsequently, the Herbst Parties and Morabito agreed to a settlement of the matter in 2011 whereby Morabito confessed to judgment for $85 million.[6] Collection on the confessed judgment was frustrated because Morabito transferred assets out of his name.[7] The Herbst Parties filed an involuntary Chapter 7 bankruptcy proceeding against Morabito,[8] and commenced this Case to unwind fraudulent transfers made by Morabito to Superpumper (an Arizona corporation in which Morabito had a controlling ownership interest), Bayuk

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[5] 48 AA 8721, ¶ 3, Judgment.

[6] *Id*., ¶ 4.

[7] *Id*. at 8722, ¶ 5.

[8] 3 AA 503–534, *Involuntary Petition*, Case No. BK-N-13-51236.

(Morabito's long-term boyfriend and business partner), in both his individual capacity and in as the trustee of the Bayuk Trust, Sam (Morabito's brother), and Snowshoe (a company owned equally by Bayuk and Sam, formed to accept Morabito's transfer of his interest in Superpumper).[9] Eighteen months into the Case proceedings, at the end of 2014, the bankruptcy court adjudicated Morabito was a chapter 7 debtor, and all parties stipulated to substitute the Trustee for the Herbst Parties as the real party in interest.[10]

It was established by the evidence adduced at the lengthy trial before Judge Steinheimer in the District Court, that within weeks of Judge Adams' September 2010 ruling against Morabito, Morabito transferred the following assets:

- $6 million in cash;[11]
- various real properties, worth $3,916,250;[12]
- a 50% ownership interest in Baruk LLC, worth $1,654,550;[13]
- a 80% equity interest in Superpumper's parent, worth $10,440,000;[14] and

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[9] 48 AA 8724–25, ¶¶ 12-16, *id*. at 8727, ¶ 18.

[10] 4 AA 608–611, *Stipulation and Order to Substitute a Party Pursuant to NRCP 17(a)*.

[11] 48 AA at 8310, ¶ 25.

[12] *Id*. at 8317, ¶ 46, *id*. 8319, ¶ 50(a).

[13] *Id*.

[14] *Id*.

- furniture and personal property;[15]

These transfers effectively made Morabito judgment-proof.[16] As the District Court noted: "By the time of Judge Adams' FF&CL [in September 2010], let alone entry of the Final Judgment on August 23, 2011, Paul Morabito's attachable assets were gone."[17] As a result of Morabito's fraudulent transfers, the District Court determined that those transfers were avoidable under the Nevada Uniform Fraudulent Transfer Act ("UFTA"), at NRS 112.140, *et. seq*., and that all fraudulently transferred assets should be returned to Morabito's bankruptcy estate.[18]

Appellants do not present a single persuasive argument to reverse the District Court's determinations.

First, the issues of jurisdiction over the Case, or personal jurisdiction over the Bayuk Trust, were not raised in the underlying trial proceedings until after the Judgment was entered. Moreover, Appellants expressly stipulated to substitute the Trustee into the Case as the real party in interest and never raised standing as a defense. As a result, Appellants' jurisdiction and standing arguments are waived.

Second, even if such arguments were not waived, the law does not support Appellants' contentions that the District Court lacked jurisdiction over the Trustee's

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[15] *Id*. at 8317, ¶ 46.

[16] *Id*. at 8300, ¶ 86.

[17] *Id*. at 8317, ¶ 45.

[18] *Id*. at 8328-8331, ¶¶ 73-82.

fraudulent transfer claims or that the Trustee lacked standing to pursue those claims. As a multitude of cases establish, avoidance actions do not belong exclusively in bankruptcy courts, who can decline to hear such matters. Here, the Bankruptcy Court blessed the District Court's adjudication of the fraudulent transfer claims, and the Trustee had statutory standing to pursue such claims on behalf of the estate's creditors.

Third, Appellants' argument that the District Court lacked jurisdiction over the Bayuk Trust because plaintiff sued only its trustee in his representative capacity – and not the trust itself – is meritless. Trusts are not independent legal entities with the capacity to sue or be sued; in fact, the only proper way a plaintiff can sue a trust is to sue its trustee, who holds legal title to the trust's res. The Bayuk Trust was properly sued, and the District Court had jurisdiction to enter judgment against it.

Fourth, Appellants' evidentiary arguments are erroneous. Like the attorney-client privilege, the common interest privilege is subject to certain exceptions, including when communications are made in furtherance of a crime or fraud or used in a proceeding where the parties who once shared the privilege become adverse. Both of these exceptions apply to the subject communications, as determined by both the District Court and Bankruptcy Court. Moreover, the Trustee waived the attorney-client privilege, as he had the right to do as the owner of the bankruptcy estate's documents. None of Appellants' evidentiary arguments hold water.

For these reasons, this Court should affirm the District Court's judgment.

V. STATEMENT OF THE FACTS

A. History of the Dispute and Related Proceedings.

The history of the Case and related proceedings prior to this appeal is lengthy, beginning in 2007, when litigation between Morabito and his affiliated Consolidated Nevada Corporation ("CNC"), on the one hand, and the Herbst Parties, on the other, was commenced in the District Court, Hon. Brent Adams presiding,[19] resulting in a fraud judgment in favor of the Herbst Parties and against Morabito and CNC in the amount of $149,444,777.80.[20]

The dispute between Morabito and the Herbst Parties resulted in Chapter 7 involuntary bankruptcy cases against Morabito and CNC (the Morabito Chapter 7 case, "Bankruptcy Case") and several fraudulent transfer avoidance actions, including the Case.[21] The Case was commenced after the Bankruptcy Court judge suspended the Bankruptcy Case and lifted the automatic stay to allow the filing the Case,[22] an action under the Nevada UFTA to avoid and recover transfers by Morabito to Bayuk, individually and as Trustee of his Bayuk Trust, his brother Sam, Superpumper, an Arizona corporation that owned and operated gas stations and

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[19] 48 AA 8271, ¶ 1, *Consolidated Nevada Corp., et al. v. JH. et al*., Case No. CV07-02764.

[20] *Id*. at 8722, ¶ 3.

[21] *Id*. at 8723-24, ¶¶ 7-10.

[22] 18 AA 2811–2814.

convenience stores in Arizona, and Snowshoe, a New York corporation created by Bayuk and Sam to receive the transfer of Morabito's equity interest in Superpumper.[23]

On September 13, 2010, Judge Adams issued an oral ruling in favor of the Herbst Parties, finding that Morabito defrauded the Herbst Parties, and awarding the Herbst Parties compensatory damages, exclusive of interest, of $85,871,364.75.[24] Within weeks of that oral ruling, the Transfers at issue in the Case were substantially complete. By the time Judge Adams' written judgment was entered on October 12, 2010, Morabito, along with Bayuk and Sam, through their joint counsel, had engaged in a series of transactions that resulted in Morabito divesting himself of substantially all executable assets. Thus, long before Judge Adams entered the final judgment awarding total damages of $149,444,777.80 (inclusive of pre-judgment interest and punitive damages) on August 23, 2011, there was nothing for the Herbst Parties to recover.[25]

Following a Settlement Agreement on November 30, 2011 and then a Forbearance Agreement on March 1, 2013, both of which Morabito promptly breached, the Herbst Parties filed their Confession of Judgment and Stipulation of

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[23] 1 AA 1–17, *Complaint* filed December 17, 2013; 4 AA 580–593, *First Amended Complaint* filed on May 15, 2015.

[24] 48 AA 8721, ¶ 2.

[25] 48 AA 8300, ¶ 86.

Non-Dischargeability in the District Court on June 18, 2013, and in the Bankruptcy Case on June 20, 2013.[26]

The Herbst Parties commenced the Case on December 17, 2013. Upon his election as the Chapter 7 trustee in the Bankruptcy Case, the Trustee substituted as the Plaintiff in the Case by stipulation of all parties.[27] The Case sought to avoid and recover the Transfers, as follows:[28]

1. Cash Transfers – Bayuk and Sam.

On September 21, 2010, Morabito transferred $420,250 to Bayuk and $355,000 to Sam for no consideration.[29]

2. The Superpumper Transfer – Snowshoe, Bayuk, and Sam.

The Superpumper Transfer was comprised of a series of transactions that resulted in the transfer of Morabito's 80% interest in Superpumper to Snowshoe, for the benefit of Bayuk and Sam. Prior to the transfer, Morabito owned 80% of Consolidated Western Corporation, Inc., a Nevada corporation ("CWC"), which was the sole shareholder of Superpumper. The other 20% was owned by Bayuk (10%) and Sam (10%). In sum, the Superpumper Transfer was comprised of the following transactions:

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[26] *Id*. at 8272-73, ¶¶ 4-7.

[27] 4 AA 608–611.

[28] 1 AA 1–17, 4 AA 580-593.

[29] 48 AA 8281.

i. Between 9/13/2010 and 9/28/2010, Morabito, Bayuk, and Sam manipulated the book value of CWC and Superpumper by taking as distributions and/or loans approximately $3 million in loan proceeds from Compass Bank, and ostensibly stripping CWC of its interest in a Bermuda insurance captive.

ii. On 9/29/2010, CWC was merged into Superpumper in order to cancel amounts due Superpumper by CWC, Morabito, and affiliates. As a result of the merger, Morabito became the direct owner of 80% of the equity of Superpumper.

iii. On 9/30/2010, Morabito sold his 80% interest in Superpumper to Snowshoe, formed by Bayuk and Sam on 9/29/2010 as a holding company for Superpumper, so that Bayuk and Sam each indirectly received 50% of Morabito's 80% interest in Superpumper.

As a result, Morabito's 80% interest in CWC/Superpumper, which had a value of $10,440,000, was sold to Snowshoe for stated consideration of $2,497,307, of which $1,035,094 was to be paid in cash, with the remaining $1,462,213 subject to a note. At most, Morabito received $1,035,068. The note was a sham that was never paid.[30]

3. Bayuk and the Bayuk Trust – Real Property/Baruk LLC Transfers.

Morabito also transferred valuable real property and his interest in a property holding company to Bayuk and the Bayuk Trust, as follows:

i. On or about October 1, 2019, Morabito transferred his 75% interest in 371 El Camino del Mar, Laguna Beach, California (the "El Camino Property"), and his 50% interest in 370 Los Olivos, Laguna Beach, California (the "Los Olivos Property"), along with the personal property in both residences; and

[30] 48 AA 8280–8288.

ii. On or about October 1, 2010, Morabito's 50% interest (with a net value of approximately $1,654,550) in Baruk Properties, LLC ("Baruk LLC"), a Nevada limited liability company, which owned the following four real properties:[31]

- 1461 Glenneyre, Laguna Beach, California, a commercial property;
- 570 Glenneyre, Laguna Beach, California, a commercial property;
- 1254 Mary Fleming, Palm Springs, California, a vacation home; and
- 49 Clayton Place, Sparks, Nevada, a vacant property.

As consideration for the transfers of his interest in the El Camino and Los Olivos Properties, Morabito received Bayuk's 30% interest in 8355 Panorama Drive, Reno, Nevada, with a value of only $291,340.80, and an "equalization" payment of $60,117. Thus, Bayuk gave value of only $351,457.80 for Morabito's interests in the Los Olivos and El Camino Properties worth $1,236,457.75. As consideration for the transfer of Morabito's interest in Baruk LLC, the Bayuk Trust gave Morabito a note in the principal amount of $1,617,050, a sham note which was never paid.[32]

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[31] On October 4, 2010, immediately after the transfer of Morabito's interest in Baruk LLC, Bayuk formed Snowshoe Properties, LLC, a California limited liability company wholly owned by Bayuk Trust, and merged Baruk LLC into it. Bayuk then transferred the Palm Springs property from Snowshoe Properties to the Bayuk Trust on November 2, 2010. *See* 48 AA 8293, ¶ 57.

[32] 48 AA 8288–8292.

B. The Rulings on the Attorney-Client Privilege.

During the Case, Trustee conducted a deposition of Dennis Vacco, who was counsel for Morabito at the time of the Transfers.[33] Vacco also jointly served as counsel for Sam, Bayuk, Superpumper, and Snowshoe.[34] Vacco testified that, in the response to a subpoena to his law firm, Lippes Mathias Wexler Friedman LLP ("Lippes Mathias"), Lippes Mathias asserted privilege on behalf of Morabito and various affiliates, including Showshoe and Superpumper.[35] Until March 10, 2016, no one ever asserted a privilege on behalf of Bayuk or Sam.[36]

Because Morabito, a non-party to the Case, asserted a privilege he was not entitled to assert under Title 11 of the United States Code (the "Bankruptcy Code"), among other reasons, counsel for the Trustee sought a determination regarding the existence and scope of Morabito's privilege for communications occurring prior to the commencement of the Bankruptcy Case by filing the *Motion to Compel Responses to Deposition Questions* in the Bankruptcy Court.[37]

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[33] 5 AA 802–851.

[34] 5 AA 817

[35] 5 AA 813–814, 829-830. Refusing to answer questions regarding conversations with Debtor based on privilege.

[36] *See generally*, 5 AA 802–851; 4 AA 628-635.

[37] 5 AA 852–903, *Order Granting Motion to Compel Responses to Deposition Questions* and Transcript of the Bankruptcy Court's December 22, 2015 oral ruling.

On February 3, 2016, the Bankruptcy Court entered an order holding, *inter alia*, that (a) the attorney-client privilege did not protect Morabito's communications with Vacco and Lippes Mathias (including with respect to the Transfers) under the crime-fraud exception; and (b) even if any remaining privilege applied, Morabito's communications became the property of the bankruptcy estate and the Trustee had the power to waive the privilege (the "Morabito Privilege Order").[38] Specifically, the Bankruptcy Court held:

> …(d) the invocation of the privilege by the Debtor affects property of his estate pursuant to Section 541 of the Bankruptcy Code that is alleged to have been fraudulently transferred; (e) the Trustee has made a prima facie showing of fraud as required by the crime/fraud exception to the attorney-client privilege, which showing has not been rebutted; (f) the inquiry required by the crime/fraud exception is focused on what the client wanted to accomplish - whether the client intended to further some fraudulent activity and engage counsel to assist in that activity; the timing of the legal services or whether the attorney's legal services were closely related have no effect on whether the crime/fraud exception is established; (g) the Trustee has met his burden to waive the Debtor's attorney-client privilege under the balancing test; and (h) as a result, the Trustee has, consistent with applicable law waived the Debtor's attorney-client privilege with Lippes Mathias and Vacco.[39]

On June 13, 2016, Discovery Commissioner Wesley M. Ayres entered a *Recommendation for Order* denying Appellants' motion for protective order (the

[38] 10 AA 1599–1604.

[39] 5 AA 900.

"Privilege Recommendation"),[40] which followed the Bankruptcy Court's ruling and reaffirmed that communications to which Morabito was a party were not protected by the common interest privilege. The Privilege Order explained that the common interest privilege did not protect communications between Morabito and Vacco that included Appellants as follows:

> In their reply brief, Defendants indicate that they do not believe Plaintiff is entitled to confidential communications that included Mr. Vacco, Mr. Morabito, and one or more Defendants. Without question, the attorney-client privilege in Nevada extends to "confidential communications . . . [m]ade for the purpose of facilitating the rendition of professional legal services to the client, by the client or the client's lawyer to a lawyer representing another in a matter of common interest." *See* NRS 49.095(3) (2015); *see also id*. 49.055 ("[a] communication is 'confidential' if it is not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication"). But no privilege exists "[a]s to a communication relevant to a matter of common interest between two or more clients if the communication was made by any of them to a lawyer retained or consulted in common, when offered in an action between any of the clients." *See* NRS 49.115(5) (2015).
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> Although Mr. Morabito and Defendants may have been joint clients of Mr. Vacco and LMWF in connection with certain transfers of property, Plaintiff is now investigating transfers that he believes were made to defraud Mr. Morabito's creditors, and he is doing so on behalf of the bankruptcy estate. Defendants argue that the exception quoted above does not apply because, "[i]n order to stand in Mr. Morabito's shoes for purposes of the joint-defense or common-interest privilege, the Trustee would need to show this Court that the Trustee is the holder, or owner, of Mr. Morabito's attorney-client privileges." That contention overstates Plaintiff's

[40] 7 AA 1113–1124.

> burden. Mr. Morabito might very well be the holder of his individual attorney-client privilege in contexts unrelated to the bankruptcy proceedings, but Plaintiff does not need to show that he controls that aspect of Mr. Morabito's attorney-client privilege to obtain confidential communications that included Mr. Vacco, Mr. Morabito, and one or more Defendants. Moreover, the bankruptcy court has already determined that Plaintiff is adverse to at least one Defendant, and that "[b]y reason of the adversity as between the Trustee and Bayuk ... , any Common Interest Privilege that may have protected the communications among Lippes, the Debtor, [and] Bayuk ... are discoverable by the Trustee who has stepped into the shoes of the Debtor" (emphasis added). That finding has support in decisions from other bankruptcy courts. Moreover, as explained by the bankruptcy court, "[t]he contents of legal files created during the course of a joint representation belong jointly to the clients with each having an undivided ownership interest in them." As trustee of the bankruptcy estate, Plaintiff has the same right to review the entire contents of Mr. Vacco's and LMWF's files concerning their representation of him- including communications that involved Mr. Morabito, Mr. Vacco, and any Defendants-as Mr. Morabito would have had prior to Plaintiff's appointment as trustee. Defendants therefore may not claim a privilege to prevent disclosure of these communications to Plaintiff.[41]

On July 6, 2016, the District Court entered a *Confirming Order* confirming, approving, and adopting the *Recommendation for Order* (the "Privilege Order").[42]

C. The Judgment and Appealed Orders.

The District Court, Hon. Steinheimer, conducted an eight-day bench trial that commenced on October 29, 2018.[43] On February 7, 2019, the District Court granted

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[41] 7 AA 1121–1123 (internal citations omitted).

[42] 7 AA 1125–1126.

[43] 48 AA 8270.

Trustee's motion to reopen evidence, based on evidence discovered in a related Bankruptcy Court proceeding, and admitted additional trial exhibits on that issue. Appellants were entitled to, but waived, rebuttal.[44] On March 29, 2019, the Judgment in the Case was entered, avoiding the Transfers and awarding Trustee the subject property or the value thereof.[45]

VI. ARGUMENT AND AUTHORITIES

A. Issues Not Raised Prior to Entry of the Judgment Have Been Waived and Cannot Be the Basis for an Appeal.

It is long been held that matters not raised properly before the trial court in the first instance are not appropriate grounds for appeal. *See Home Furniture, Inc. v. Brunzell Const. Co*., 84 Nev. 309, 317–18, 440 P.2d 398, 404 (1968) (issue never raised by the pleadings nor made an issue in the pretrial conference and entering the trial for the first time during counsel's final argument, is not part of the record on appeal and is waived under NRCP 12(h)); *Mason v. Fakhimi*, 109 Nev. 1153, 1158, 865 P.2d 333, 336 (1993) (issue never raised in the pleadings or made an issue in the pretrial conference, but raised for the first time during final argument, was not part of the record on appeal); *McKay v. City of Las Vegas*, 106 Nev. 203, 207, 789 P.2d 584, 586 (1990) (declining to consider issue that was not litigated or decided by the

[44] 46 AA 7894 – 47 AA 8158

[45] 48 AA 8270–8333.

district court), *overruled on other grounds by Salaiscooper v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 117 Nev. 892, 34 P.3d 509 (2001)

Appellants' arguments regarding the District Court's jurisdiction over the Bayuk Trust, including the argument that it was a self-settled spendthrift trust, were raised for the first time three months after entry of the Judgment in the post-judgment proceedings, resulting in the Exemption Orders that are not the proper subject of this appeal. While Bayuk's arguments (and facts) have continued to evolve during briefing and argument on the exemption claims, none of them were raised at all prior to entry of the Judgment, and a review of the Case record will not reflect a single reference to spendthrift trusts, *in rem* jurisdiction, or NRS 166.170. Appellants failed to raise the (non)issue of the Trustee's "authorization from the Bankruptcy Court" at all in this Case. Therefore, Appellants' arguments, which are meritless for the reasons discussed below, have been waived.

B. The District Court Had Jurisdiction Over the Fraudulent Transfer Claims, and the Trustee Had Standing to Pursue Those Claims.

In their First Issue, Appellants contend the District Court lacked jurisdiction over the Trustee's fraudulent transfer claims. Appellants' Br. 18-24. But neither the law nor the procedural history of the Case support their contention: (1) avoidance actions do not belong exclusively in bankruptcy courts, who can decline to hear such matters and leave them to state courts; (2) the Bankruptcy Court in this Case abstained to enable the District Court's adjudication of the UFTA claims; (3) the Trustee had statutory standing to pursue these claims on behalf of Morabito's

bankruptcy estate for the benefit of his creditors; and (4) even if the Trustee did not have standing pursuant to the plain language of the Bankruptcy Code, Appellants waived their standing defense when they failed to plead it and also expressly stipulated to substitute the Trustee into the Case as the real party in interest.

1. Bankruptcy Court Do Not Have Exclusive Jurisdiction Over Avoidance Actions, and the District Court Had Subject Matter Jurisdiction.

Appellants claim the District Court "was without subject matter jurisdiction over this entire litigation due to [its] nature... That is, the Trustee was without authority to pursue a core matter… that lies within the exclusive jurisdiction of the Bankruptcy Court." Appellants' Br. at 4, 19-21. Failing to even cite the applicable jurisdictional statute, however, Appellants misconstrue fundamental tenets of bankruptcy court jurisdiction.

Although adversary proceedings based on claims of fraudulent conveyance are "core matters," over which bankruptcy courts, as Article I courts, are granted "plenary power" to hear and decide cases (*i.e.*, to enter final judgment without review by an Article III court), Appellants' argument that bankruptcy courts enjoy exclusive jurisdiction over such matters is incorrect. Though federal district courts and, pursuant to 28 U.S.C. § 157, bankruptcy courts, "have original and exclusive jurisdiction of all cases under title 11," they do not have "exclusive jurisdiction of all civil proceedings arising under title 11 or arising in or related to cases under title 11." 28 U.S.C. § 1334(a) and § 1334(b).

The fact that a fraudulent transfer action is a "core" proceeding under 28 U.S.C. § 157(b) does not give rise to exclusive federal jurisdiction. "Rather, there is concurrent federal and state jurisdiction over fraudulent transfer actions and many other core proceedings." *In re McCarthy*, 230 B.R. 414, 418 (B.A.P. 9th Cir. 1999) (citing 28 U.S.C. § 1334(b); *Fidelity Nat'l Title Ins. Co. v. Franklin (In re Franklin)*, 179 B.R. 913 (Bankr. E.D. Cal. 1995)); *Hopkins v. Plant Insulation Co*., 349 B.R. 805 (N.D. Cal. 2006) (fraudulent conveyance claim is not subject to exclusive federal jurisdiction); *see also Sanders v. City of Brady (In re Brady, Texas, Mun. Gas Corp.)*, 936 F.2d 212, 218 (5th Cir. 1991) ("the only aspect of the bankruptcy proceeding over which the district courts and their bankruptcy units have exclusive jurisdiction is 'the bankruptcy petition itself," whereas the state courts have concurrent jurisdiction in other matters arising in or related to cases under the Bankruptcy Code).

Moreover, bankruptcy courts are not required to hear core proceedings. *McCarthy*, 230 B.R. at 418 ("There is nothing wrong with letting a state court decide a matter over which it has concurrent jurisdiction."). Rather, bankruptcy courts can decline to hear core matters and allow them to proceed in a non-bankruptcy forum with concurrent jurisdiction. *Hopkins*, 349 B.R. at 810 (the grant of plenary power to bankruptcy judges over these matters is "*permissive rather than mandatory*") (emphasis added).

Bankruptcy courts across the country regularly do just that – decline to hear core matters and allow state courts to exercise concurrent jurisdiction, including in actions to avoid fraudulent conveyances. *See In re Rosenblum*, 545 B.R. 846, 854–56 (Bankr. E.D. Pa. 2016) (bankruptcy and state courts enjoy concurrent jurisdiction to avoid fraudulent transfer claims); *Hopkins*, 349 B.R. 805; *In re CitX Corp*., 302 B.R. 144, 161, n.10 (Bankr. E.D. Pa. 2003) ("bankruptcy courts do not have exclusive jurisdiction over adversary proceedings, and such matters may be heard in a non-bankruptcy forum") (citing *Quality Tooling, Inc. v. United States*, 47 F.3d 1569, 1573 (Fed. Cir. 1995)); *In re Kaufman & Roberts, Inc.*, 188 B.R. 309, 314 (Bankr. S.D. Fla. 1995) ("[b]ecause of this Court's concurrent jurisdiction with the state court, the Trustee may intervene in the state court action").

Appellants outright ignore these legal authorities, of which they are well aware,[46] and instead rely on cases like *Gruntz* to support their untenable position. But neither *Gruntz* nor any other case Appellants cite is instructive. For example, the issue in *Gruntz* was whether a state court could modify or otherwise act in derogation of a bankruptcy court's automatic stay order. *In re Gruntz*, 202 F.3d 1074, 1082 (9th Cir. 2000). *Gruntz* did not address a state court's subject matter

[46] Appellants are necessarily aware of these legal authorities because the District Court cites to them when addressing the Trustee's standing in the Conclusions of Law section of its Judgment. 48 AA 8302. Instead of distinguishing these authorities or offering one reason why they should not be followed, Appellants choose to entirely ignore them.

jurisdiction. Likewise, the Court in *McGhan* did not hold that the state court lacks the power to act in a matter over which it has concurrent jurisdiction; rather, the *McGhan* Court found that state courts lack subject matter jurisdiction to modify or disturb a bankruptcy court's discharge order because bankruptcy court orders are not subject to collateral attack in other courts. *In re McGhan*, 288 F.3d 1172, 1179 (9th Cir. 2002). Nothing in *Gruntz* or *McGhan* suggests that a bankruptcy court lacks power to decline jurisdiction over core matters or that a state court cannot preside over such matters.

2. The Bankruptcy Court Blessed the District Court's Authority to Adjudicate the Claims.

Here, on December 17, 2013, the Bankruptcy Court suspended the Bankruptcy Case to permit the Herbst Parties to file the Case.[47] The Bankruptcy Court deliberately left adjudication of the underlying fraudulent transfer claims to the District Court. And in June 2019, when Appellants raised this very same argument (including their reliance on *Gruntz*) to challenge the District Court's jurisdiction over the matter, the Bankruptcy Court confirmed its decision. Rejecting Appellants' argument and recognizing the "permissive" nature of its own source of jurisdiction, the Bankruptcy Court explained: "We can decline -- bankruptcy courts can decline[] to hear those matters, and they go to state court. There's no doubt about

[47] 18 AA 2811–2814.

that."[48] Appellants' contention, therefore, that the District Court lacked subject matter jurisdiction because the Trustee did not obtain authorization from the Bankruptcy Court before pursuing the avoidance action is not only unconvincing[49] but also wholly unsupported by the record.

3. Appellants Stipulated to Substitution of the Trustee as the Real Party in Interest and Waived Any Standing Defense.

Even if the Trustee did not have standing, which he did, Appellants waived their right under Nevada law to assert standing as a defense. *See Contrail Leasing Partners, Ltd. v. Exec. Serv. Corp.*, 100 Nev. 545, 549 n.2, 688 P.2d 765, 767 n.2 (1984) (citing *Tobler & Oliver Const. Corp. v. Nevada State Bank*, 89 Nev. 269, 510 P.2d 1364 (1973) (an allegation of lack of standing due to failing to comply with procedural requirements must be pleaded affirmatively and with particularity or otherwise waived); *Brinkerhoff v. Foote*, 387 P.3d 880 (Nev. 2016) (not published) (party waived the issue of standing by failing to raise it as an affirmative defense the pleading stage). Here, Appellants not only failed to plead standing as a defense but

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[48] 1 Resp. Appx. 163, June 6, 2019 Bankruptcy Court Hrg. Transcript.

[49] None of the legal authorities cited by Appellants support their contention that a trustee must obtain a bankruptcy court's approval to pursue a fraudulent conveyance claim (or any other type of claim for that matter), but relate to matters of professional compensation for which bankruptcy court approval is required under the Bankruptcy Code. *See In re New England Fish Co.*, 33 B.R. 413, 419 (Bankr. W.D. Wash. 1983) (trustee should have sought judicial approval regarding how much to compensate a CPA for its services in the case); *Newport v. Sampsell*, 233 F.2d 944, 946 (9th Cir. 1956) (trustee should have sought bankruptcy court's approval to hire and pay a third party to manage the bankrupt estate).

later affirmatively endorsed the Trustee's standing to pursue the Case when, on May 15, 2015, they stipulated to substitute him for the Herbst Parties in as the real party in interest.[50]

4. The Trustee Had Standing to Pursue the Fraudulent Transfer Claims Under the Bankruptcy Code.

Appellants now want to backtrack on their own stipulation, arguing that the underlying claims were personal to the Herbst Parties and therefore not assignable under Nevada law, and that the Trustee lacked standing to pursue the fraudulent transfer claims. Even if Appellants had not waived these arguments, they lack merit.

In support of the argument that fraudulent transfer claims are not assignable, Appellants cite to *Reynolds v. Tufenkjian*, 136 Nev. Adv. Op. 19, 461 P.3d 147, 152 (2020), where this Court explained, "Nevada generally prohibits the assignment of tort claims on public policy grounds, as many tort claims are personal in nature and meant to recompense the injured party." *Reynolds*, 461 P.3d at 152 (citing *Prosky v. Clark*, 32 Nev. 441, 445, 109 P. 793, 794 (1910) (recognizing fraud claims are not assignable due to their personal nature). Appellants' legal authorities are once again inapposite, however, because neither *Reynolds* nor *Prosky* address whether *fraudulent transfer* claims are personal in nature or assignable to a trustee in bankruptcy.

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[50] 4 AA 616–623; 4 AA 608–611, 624–627.

Unlike personal tort claims, fraudulent transfer claims are derived from injury to the bankruptcy estate and meant to recompense the estate and all of its creditors equally. *See, e.g., In re AgriBioTech, Inc.*, 319 B.R. 207 (D. Nev. 2004); *In re Folks*, 211 B.R. 378, 386 (B.A.P. 9th Cir. 1997) (a bankruptcy trustee has the right to bring action which is property of the estate, as the trustee is acting to benefit the debtor's estate, and is ultimately benefitting the estate's creditors upon distribution); *see also Cissell v. Am. Home Assur. Co.*, 521 F.2d 790, 793 (6th Cir. 1975) (citing *Buttrey v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 410 F.2d 135 (7th Cir. 1969) (the Bankruptcy Act specifically vests a trustee with the right of creditors to avoid fraudulent conveyances for the benefit of the bankrupt's estate).

Further, neither *Williams v. California 1st Bank*, 859 F.2d 664, 667 (9th Cir. 1988) nor *In re Ozark Rest. Equip. Co., Inc.*, 816 F.2d 1222, 1228 (8th Cir. 1987), cited by Appellants, stands for the proposition that a bankruptcy trustee lacks standing to sue a third party on behalf of creditors to recover a fraudulent transfer. Instead, both cases address the limited question of whether a bankruptcy trustee has standing to pursue "general causes of action," like alter ego claims, on behalf of creditors. As the Second Circuit explained, "[T]here is a difference between a creditor's interests in the claims of the [debtor] against a third party, which are enforced by the trustee, and the creditor's own direct—not derivative—claim against the third party, which only the creditor ... can enforce." *In re Bernard L. Madoff Inv.*

Sec. LLC, 740 F.3d 81, 88 (2d Cir. 2014) (citing *Steinberg v. Buczynski*, 40 F.3d 890, 893 (7th Cir. 1994)).

A trustee's standing to pursue fraudulent transfer claims under state fraudulent transfer statutes is expressly provided by the "strong arm" provisions of 11 U.S.C. § 544, which give trustees the power to avoid and recover transfers for the benefit of the estate.[51] Courts interpreting Section 544 recognize that trustees "stand in the shoes" of creditors to simplify proceedings and assure all creditors are treated equitably. *See In re Tribune Co. Fraudulent Conveyance Litig.*, 946 F.3d 66, 86 (2d Cir. 2019) ("Section 544, vesting avoidance powers in the trustee et al., is intended to simplify proceedings, reduce the costs of marshalling the debtor's assets, and assure an equitable distribution among the creditors"); *In re MortgageAmerica Corp.*, 714 F.2d 1266, 1275 (5th Cir. 1983) (Section 544(b) "allows the bankruptcy trustee to step into the shoes of a creditor for the purpose of asserting causes of action under state fraudulent conveyance acts for the benefit of all creditors"); *In re Montclair Homes*, 200 B.R. 84, 94 (Bankr. E.D.N.Y. 1996) (a bankruptcy trustee "stands in the shoes" of the estate's creditors).

The Ninth Circuit has described a trustee's power to pursue an avoidance action as vested exclusively in the trustee. *In re Parmetex, Inc.*, 199 F.3d 1029, 1031

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[51] 11 U.S.C. § 544(a) provides "the trustee shall have, as of the commencement of the case . . . the rights and powers of, or may avoid any transfer of property of the debtor or any obligation incurred by the debtor" that is voidable by creditors as of the commencement of the bankruptcy case. 11 U.S.C. § 544(a).

(9th Cir. 1999) (holding a trustee must generally file an avoidance action under Chapter 7); *In re Curry & Sorensen, Inc.*, 58 B.R. 824, 828 (B.A.P. 9th Cir. 1986) (noting the power to commence avoidance actions is typically exclusively vested in trustees). Other courts agree. *See e.g. Matter of Pointer*, 952 F.2d 82, 87–88 (5th Cir. 1992) ("[O]nly a trustee, not a creditor, is authorized to exercise the avoidance powers").

A trustee's power necessarily includes the power to pursue state fraudulent conveyance claims under 11 U.S.C. § 544(b), which states, in relevant part, that "the trustee may avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is voidable under applicable law by a creditor holding an unsecured claim . . . ." 11 U.S.C. § 544(b)(1); *see also In re Brasby*, 109 B.R. 113, 115 (Bankr. E.D. Pa. 1990), *aff'd sub nom. Brasby v. Joseph G. Perry, Inc.*, No. CIV. A. 90-0859, 1992 WL 21362 (E.D. Pa. Jan. 27, 1992); *In re Vandevort*, No. BAP CC-09-1078-MOPAR, 2009 WL 7809927, at *7 (B.A.P. 9th Cir. Sept. 8, 2009) (citing *Chichester v. Mason*, 43 Cal. App. 2d 577, 111 P.2d 362 (1941); *Wells v. Lloyd*, 35 Cal. App. 2d 6, 94 P.2d 373 (1939) (holding bankruptcy trustees can be substituted in as proper plaintiffs in state court fraudulent transfer cases originally filed by the debtor's creditors).

Thus, the Trustee was authorized to pursue recovery of the Transfers pursuant to Section 544(b), and Appellants present no basis to disturb the District Court's Judgment.

C. The District Court Had Jurisdiction Over the Bayuk Trust.

In their Second issue, Appellants contend the District Court never acquired subject matter jurisdiction over the Bayuk Trust for two reasons: (1) because the bankruptcy Trustee never named the Bayuk Trust as a defendant, instead naming only Bayuk, in his capacity as trustee of the Bayuk Trust; and (2) failure to name the Bayuk Trust means the trial court did not have *in rem* jurisdiction over the trust res, as purportedly required under NRS Chapter 164. Appellant's Br. at 4-5, 24-26.

Not only are Appellants confusing personal and subject matter jurisdiction, but the law once again does not support either of their contentions.

1. NRS Chapter 164 Is Not Relevant Because the Case Is Not a Trust Administration Action.

First, the Court must reject the Bayuk Trust's contention that the District Court lacked *in rem* jurisdiction under NRS Chapter 164 because this is not a trust administration case, but a fraudulent transfer case, and Chapter 164 is therefore irrelevant.[52] The Case was not initiated upon a petition to administer trust assets, nor does it concern the trust's internal affairs.

NRS 164.010(1), cited by the Bayuk Trust, provides: "*Upon petition of any person appointed as trustee* of an express trust by any written instrument other than a will, *or upon petition of a settlor or beneficiary of the trust*, the district court…

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[52] For this same reason, Appellants' reliance on *In re Aboud Inter Vivos Tr.*, 129 Nev. 915, 314 P.3d 941 (2013) is misplaced. *Aboud* involved an action for trust accounting.

shall assume jurisdiction of the trust....” (Emphasis added). Similarly, NRS 164.015(1) provides: “The court has exclusive jurisdiction of proceedings *initiated by the petition* of an interested person *concerning the internal affairs* of a nontestamentary trust….” (Emphasis added.)

Here, neither provision is relevant. No petition by a trustee, settlor, or beneficiary was pending; rather, the Case was a fraudulent transfer action commenced under Nevada’s UFTA by a plaintiff who is a stranger to the Bayuk Trust.

The Nevada Supreme Court has rejected a parallel argument in *Klabacka v. Nelson*, 133 Nev. 164, 394 P.3d 940, 946 (2017). There, the husband and his trust appealed a divorce decree, arguing, among other things, that the family court lacked jurisdiction to hear trust-related claims. *Id*. at 946. The Supreme Court found that the family court had subject-matter jurisdiction over all claims brought in the divorce, including those relating to property held within the self-settled spendthrift trusts, even though the case was not initiated for the purpose of enforcing or determining beneficiary rights under NRS 164.010 or determining the internal affairs of a nontestamentary trust under NRS 164.015(1). Id.

By the same reasoning applied in *Klabacka*, this Court is not deprived of jurisdiction merely because a trust or its property is implicated.

2. *In Rem* Is a Form of Personal Jurisdiction, Rather Than Subject Matter Jurisdiction, and the District Court Had Personal Jurisdiction Over the Bayuk Trust.

Appellants' argument seems to confuse personal and subject matter jurisdiction. Subject matter jurisdiction defines a court's authority to hear a given type of case, whereas personal jurisdiction defines a court's authority over a particular defendant. *Carlsbad Tech., Inc. v. HIF Bio, Inc.*, 556 U.S. 635, 639, 129 S. Ct. 1862, 1866, 173 L. Ed. 2d 843 (2009); *United States v. Morton*, 467 U.S. 822, 828, 104 S. Ct. 2769, 2773, 81 L. Ed. 2d 680 (1984).

When Appellants contend that the District Court lacked *in rem* subject matter jurisdiction over the Bayuk Trust, they confuse the two legal concepts. *In rem* is a type of personal jurisdiction. *See Sippel Dev. Co. v. Charter Homes at Hastings, Inc.*, No. 1485 WDA 2018, 2019 WL 4233848, at *3 (Pa. Super. Ct. Sept. 6, 2019) ("Sippel's further contention that Lancaster County lacked '*in rem* subject matter jurisdiction' mixes apples with oranges. Whether a court has *in rem* jurisdiction is a question of personal jurisdiction, not subject matter jurisdiction"); *see also Welk v. GMAC Mortg., LLC*, No. 11-CV-2676 PJS/JJK, 2012 WL 3260355, at *3 (D. Minn. Aug. 8, 2012), *aff'd*, 720 F.3d 736 (8th Cir. 2013) (stating that subject-matter jurisdiction relates to the power of an institution, implicating a question of sovereignty, whereas personal and *in rem* jurisdiction relate to the rights of an individual (either an individual who has been sued or an individual whose rights may be affected by the adjudication of the status of a res), implicating a question of

individual liberty); *see also FleetBoston Fin. Corp. v. FleetBostonFinancial.com*, 138 F. Supp. 2d 121, 129 (D. Mass. 2001) ("This type of jurisdiction is often called personal jurisdiction, but it may more generically be called territorial jurisdiction because it can extend both over persons (in personam jurisdiction) and over things (*in rem* jurisdiction)"); *see also Coastland Corp. v. N. Carolina Wildlife Res. Comm'n*, 134 N.C. App. 343, 346, 517 S.E.2d 661, 663 (1999) ("Our case law comports with the general understanding that *in rem* is but one type of personal jurisdiction").

Here, the District Court explained exactly why it had personal jurisdiction over each defendant, including Bayuk, as trustee of the Bayuk Trust:

> In Nevada, a defendant who assists with fraudulent transfers or other efforts to impede satisfaction of a judgment is subject to personal jurisdiction. See Casentini v. Ninth Judicial Dist. Court of State In & For Cty. of Douglas, 110 Nev. 721, 727, 877 P.2d 535 (1994)… The Court finds that based on Defendants' connections to Nevada, including that Bayuk and Sam Morabito are former residents of Reno [and] each Defendants' acceptance of fraudulent transfers of Nevada assets following a Nevada judgment… it has jurisdiction over all Defendants."[53]

In other words, the Bayuk Trust accepted fraudulent transfers of Nevada assets following entry of a Nevada judgment. And Bayuk, as its trustee, received those fraudulent transfers, which originated in Washoe County, Nevada, on behalf of the Bayuk Trust. The District Court therefore had jurisdiction over the Bayuk Trust.

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[53] 48 AA at 8302.

3. The Bayuk Trust Was Properly Sued by Naming Bayuk, In His Capacity As Trustee of the Bayuk Trust, As Defendant.

Finally, the decision to sue Bayuk, in his capacity as trustee of the Bayuk Trust, was proper and in line with a long history of case law holding that suing a trustee in his or her representative capacity is the appropriate way to obtain an enforceable judgment against trust property. A fundamental tenet of American jurisprudence is that trusts are nonexistent entities, and to obtain an enforceable judgment against trust property, a plaintiff must sue its trustee, *i.e.*, the individual or entity that holds legal title to trust property, not the trust itself.

Nevada courts espouse this theory. Since as early as 1979, the Nevada Supreme Court has held that because a trust is neither a natural nor artificial person, it is the trustee, rather than the trust itself, who is the real party in interest entitled to sue and be sued. *Causey v. Carpenters S. Nevada Vacation Tr.*, 95 Nev. 609, 610, 600 P.2d 244, 245 (1979) (voiding a district court's summary judgment where trusts, instead of their trustees, commenced action). And most recently, the Nevada Court of Appeals vacated a summary judgment entered against a trust, where its trustee was not named a defendant but only the trust itself was named. *Thomas & Kathleen Garland Family Tr. v. Melton*, 460 P.3d 31 (Nev. App. 2020). The *Melton* court explained, "…a trust is not an independent legal entity which is separate and distinct from its trustees… a trust itself can neither sue nor be sued in its own name… instead, it is the trustee who is the real party in interest and entitled to bring suit."

(citing *Causey*, 95 Nev. at 610 and *Presta v. Tepper*, 102 Cal. Rptr. 3d 12, 16 (Ct. App. 2009).

Federal courts in Nevada have held the same. *See also Daisy Tr. v. JP Morgan Chase Bank*, No. 213CV00966RCJVCF, 2016 WL 7107762, at *4 (D. Nev. Dec. 6, 2016) (following Nevada Supreme Court's decision in *Causey* and holding that a trust cannot sue or be sued; rather, a lawsuit against a trust must be brought in the name of the trustee); *Cundiff v. Dollar Loan Ctr. LLC*, 726 F. Supp. 2d 1232, 1243 (D. Nev. 2010) (also observing that a trust is not a necessary or indispensable party; the trustee is properly named as a party).

Courts throughout the country consistently agree. *See In re Endeavour Highrise, L.P.*, 432 B.R. 583, 659 (Bankr. S.D. Tex. 2010) (citing *Ditta v. Conte*, 298 S.W.3d 187, 191 (Tex. 2009) and *Ray Malooly Tr. v. Juhl*, 186 S.W.3d 568, 570 (Tex. 2006) (a trust is not a legal entity and suits against a trust must be brought against its legal representative, the trustee); *see also Galdjie v. Darwish*, 113 Cal. App. 4th 1331, 1344, 7 Cal. Rptr. 3d 178, 188 (2003), *as modified on denial of reh'g* (Dec. 23, 2003)*, as modified on denial of reh'g* (Dec. 23, 2003) (quoting *Weil & Brown*, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2003) ¶ 2:126, p. 2–36) (a trust "is simply a collection of assets and liabilities" and has "no capacity to sue or be sued, or to defend an action, and any litigation must be maintained by or against the trustee); *see also Sunbelt Envtl. Servs., Inc. v. Rieder's Jiffy Mkt., Inc.*, 138 S.W.3d 130, 134 (Mo. Ct. App. 2004) (trustees are necessary

parties); *W. Life Tr. v. State*, 536 N.W.2d 709, 712 (N.D. 1995) (trustee is real party in interest); *Colorado Springs Cablevision, Inc. v. Lively*, 579 F. Supp. 252, 254 (D. Colo. 1984) (trustee was properly named defendant and trust therefore was not indispensable).

Not only was it proper to sue the Bayuk Trust by naming Bayuk, its trustee, as the defendant, but doing the opposite would have contravened extensive legal precedent. The trustee was properly named, and the District Court had jurisdiction over the Bayuk Trust.

D. The District Court Did Not Err in Admitting Evidence.

In their Third Issue, Appellants contend the District Court erred in admitting certain evidence at trial by (1) requiring Appellants to divulge confidential communications purportedly protected by the common interest privilege and (2) admitting Exhibit 145 over Appellants' objections to hearsay and authentication. Appellants' Br. at 6-7, 26-36.

1. The Common Interest Privilege Does Not Protect the Communications.

Appellants first argue the District Court erroneously (and *absurdly*) interpreted NRS 49.115 to require disclosure of Appellants' own documents and information purportedly protected by NRS 49.095(3), the common interest privilege

(a type of attorney-client privilege).[54] Appellants' Br. at 26-32. NRS 49.095(3), provides, "[a] client has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications… [m]ade for the purpose of facilitating the rendition of professional legal services to the client, by the client or the client's lawyer to a lawyer representing another in a matter of common interest.

While the common interest privilege (like the attorney-client privilege) is extremely important to our legal system, it is not limitless. It is "well settled that privileges, whether creatures of statute or the common law, should be interpreted and applied narrowly." *See Clark Cty. Sch. Dist. v. Las Vegas Review-Journal*, 134 Nev. 700, 705, 429 P.3d 313, 318 (2018) (internal quotation marks omitted). Nevada recognizes important limitations to the privilege. As relevant here, NRS 49.115(1) and (5), respectively, provide exceptions to the common interest privilege for communications made in furtherance of a crime or fraud and communications between parties who are now adverse in litigation.

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[54] Appellants do not specify exactly which documents are at issue, consistent with their failure to specifically assert a privilege in the discovery dispute that resulted in the Privilege Recommendation and Privilege Order. *See* 7 AA 1120 ("Defendants have not identified specific information or documents that they believe are protected and which they believe Plaintiff will request during Mr. Vacco's deposition."). The Trustee therefore addresses Appellants' legal arguments on the common interest privilege generally and not with respect to any particular document.

Both exceptions apply here,[55] rendering Appellants' argument flawed because: (1) the privilege never attached to the underlying communications with counsel because of the crime-fraud exception; (2) the privilege does not apply in litigation when parties are adverse to each other; and (3) even if the privilege applied, the Trustee has waived the privilege and has the authority to do so.

a. <u>The crime-fraud exception.</u>

First, the crime-fraud exception means the common interest privilege never attached to Morabito's communications. "There is no privilege under NRS 49.095... if the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud." NRS 49.115(1). As Nevada's statute makes clear, neither the attorney-client privilege nor the common interest privilege extends to communications concerning a client's contemplated criminal and fraudulent acts.

The communications that Appellants assert were privileged were exchanged to effectuate fraudulent transfers, including the subject Transfers. Bankruptcy courts regularly apply the crime-fraud exception to fraudulent transfers. *In re Andrews*, 186 B.R. 219, 222 (Bankr. E.D. Va. 1995); *Feltman v. Leading Edge Group*

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[55] Appellants argue the common interest privilege in NRS 49.095(3) "should be superior to the exceptions in NRS 49.115(1) (crime or fraud) and NRS 49.115(5) (dispute between clients) under the facts of this case." Appellants' Br. 30. The argument flies in the face of the statute's plain language. These exceptions do not become obsolete in the face of alleged common interest privilege.

Holdings, Inc., 2008 Bankr. LEXIS 4430 at *8 (Bankr. S.D. Fla 2008) ("The crime fraud exception has been applied by bankruptcy courts to cases involving fraudulent transfers."); *see also In re Warner*, 87 B.R. 199, 203–03 (Bankr. M.D. Fla. 1988) (applying the crime-fraud exception when looking into the validity of transfers under Sections 544 and 548 of the Bankruptcy Code); *In re Campbell*, 248 B.R. 435, 439–440 (Bankr. M.D. Fla. 2000) (applying the crime-fraud exception where a creditor sought the production of documents related to the debtor's action in contemplation of, prior to, or during the transfers of assets that were allegedly fraudulent). The common interest privilege therefore never attached.

Appellants never disputed the loss of the attorney-client privilege protection for communications between Morabito and Vacco on the basis of the crime-fraud exception,[56] but now argue the crime-fraud exception should not have applied because it was based on "mere allegations," as the Trustee did not have a favorable ruling on his fraudulent transfer claims until after trial. Appellants' Br. at 31-32. The argument is both senseless and unsupported by legal precedent. If a trustee were expected to prove his fraudulent transfer claims before the exception could apply to render documents discoverable in a fraudulent transfer action, then the exception would be completely devoid of purpose. It makes no sense that a party would wait until after trial to rely on the exception for discovery or evidentiary purposes.

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[56] 7 AA 1117–1118.

Further, Appellants do not offer a single case to support their position. Ample authority, however, establishes that federal courts require only a *prima facie* showing that the client was engaged in fraudulent conduct when he sought the advice of counsel, or that he committed fraud subsequent to receipt of advice from counsel, and that the attorneys' assistance was obtained in furtherance of the fraudulent activity or was closely related to it.[57] *See, e.g., Cox v. Administrator US Steel & Carnegie,* 17 F.3d 1386, 1416 (11th Cir. 1994); *In re Blier Cedar Co., Inc.*, 10 B.R. 993 (Bankr. D. Me. 1981) (ordering production of documents shown on a prima facie basis to have constituted fraudulent transfers); *In re Cutuli*, No. 11-35256-BKC-AJC, 2013 WL 5236711, at *1, n.3 (Bankr. S.D. Fla. Sept. 16, 2013) ("[b]ankruptcy courts have held that merely raising an 'inference that . . . transfers may have been fraudulent' is sufficient to invoke the crime-fraud exception.").

b. Adverse parties' exception.

Second, NRS 49.115(5) provides there is no common interest privilege under NRS 49.095 "[a]s to a communication relevant to a matter of common interest between two or more clients if the communication was made by any of them to a lawyer retained or consulted in common, when offered in an action between any of the clients."

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[57] As the Bankruptcy Court evaluated the crime-fraud exception with respect to Morabito's communications, the issue was determined under federal law in the first instance.

In his June 13, 2016 Privilege Recommendation, which the District Court adopted and confirmed on July 5, 2016,[58] the Discovery Commissioner determined that Appellants were ignoring NRS 49.115(5). 7 AA 1121–1122. Although Morabito and Appellants may have once been joint clients and shared legal counsel, the Trustee was acting on behalf of Morabito's bankruptcy estate to investigate transfers that he contended were made to defraud creditors. The Trustee stood in Morabito's shoes, giving the Trustee ownership of Morabito's documents, and was adverse to Appellants. *Id*. By reason of that adversity, any communications among Morabito, Appellants, and their former attorneys that may have been protected by a common interest privilege were discoverable. *Id*. (citing *In re Taproot Sys., Inc.*, No. 11-05255-8-JRL, 2012 WL 2253743, at *3 (Bankr. E.D.N.C. June 15, 2012); *In re Indiantown Realty Partners, Ltd. P'ship*, 270 B.R. 532, 538–39 (Bankr. S.D. Fla. 2001); *In re Lynch*, No. 97-10381, 1998 WL 908950, at *2 (Bankr. D. Vt. Dec. 17, 1998) & n. 6 (Bankr. D. Vt. Dec. 17, 1998).

c. <u>Trustee's waiver of the privilege.</u>

Third, even if the Appellants' documents were protected by the common interest privilege, which they are not, the Trustee waived that privilege and had the authority to do so. Here, all of Morabito's property became property of the bankruptcy estate under Section 541 of the Bankruptcy Code, including his client

[58] 7 AA 1113–1126.

files and communications with his lawyers.[59] Thus, as trustee of the bankruptcy estate, the Trustee succeeded to the right to review the entire contents of the attorneys' files concerning their representation of Morabito, including those that involved Morabito, Vacco, and any of the Appellants, that Morabito had prior to the commencement of the Bankruptcy Case.[60]

It is well established that a bankruptcy trustee owns the bankrupt debtor's documents and controls the attorney client-privilege. *See Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 351, 105 S. Ct. 1986, 85 L. Ed. 2d 372 (1985). Various courts have extended the holding in *Weintraub* to bankruptcy trustees in individual Chapter 7 cases. *See In re Foster*, 188 F.3d 1259, 1265 (10th Cir. 1999), *In re Bazemore*, 216 B.R. 1020 (Bankr. S.D. Ga. 1998). Courts have also allowed a trustee to control and waive the privilege to pursue avoidance actions against insiders, affiliates, or third-party transferees. *See In re Bame*, 251 B.R. 367 (Bankr. D. Minn. 2000).

Therefore, Appellants could not claim a privilege to prevent disclosure to the Trustee any more than they could prevent disclosure to Morabito, and as the

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[59] 39 AA 6818–7011 ("I stand in the shoes of the debtor…and I own the debtor's records from his accountants to his attorneys").

[60] *See* 7 AA 1122–1123.

Bankruptcy Court,[61] the Discovery Commissioner,[62] and the District Court[63] held, the Trustee had authority to waive any attorney-client privilege.

2. The District Court Did Not Abuse Its Discretion in Admitting Exhibit 145.

In their final point, Appellants take issue with the District Court's reliance on Exhibit 145 as evidence that the transfer of the Baruk properties was fraudulent, contend the exhibit was hearsay and admitted without proper authentication. Appellants' Br. at 32-36.[64]

Exhibit 145 is a December 14, 2014 email from Vacco to Bayuk, copying Morabito and Stephanie Canastaro (Vacco's legal assistant).[65] In the email, Vacco

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[61] 10 AA 1599–1604.

[62] 7 AA 1113–1124.

[63] 7 AA 1125–1126;

[64] Appellants only specifically argue against the District Court's admission of Exhibit 145, but in passing also contend the District Court "committed similar errors in allowing 25 emails drafted by Morabito to be admitted into evidence, even though they were produced after the close of discovery. 22 AA 3682–3683, 3690–3694, 3697, 3699–3701; 24 AA 3981–3985, 4056–4057, 4060–4066; 26 AA 4344, 4352, 4353, 4368, 4372–4378, 4419–4422, 4429–4432, 4435–4436; 27 AA 4658–4659." Appellants' Br. 36. Although Appellants do not explain how the District Court erred with respect to each exhibit, none of the emails admitted by the District Court, which were unquestionably relevant, constituted inadmissible hearsay. They were either excluded from hearsay under NRS 51.035 as not offered for the truth of the matter asserted or fell under a recognized hearsay exception or exclusion under NRS 51.075, NRS 51.105(1), NRS 51.135, NRS 51.315 or NRS 51.345(1). 20 AA 3326-3334; 39 AA 7008-7011.

[65] 36 AA 6094–6096.

encloses certain documents, including a deed of trust and a guaranty, and asks Bayuk to execute the documents to effectuate a transfer of the Baruk properties. *Id*. When the Trustee offered Exhibit 145 into evidence at trial, Appellants' counsel objected on grounds of hearsay and foundation. *Id*. After a brief exchange regarding the objections, the Court concluded the email was sufficiently authenticated and admissible as an admission by party opponent. *Id*. at 6096.

a. Trustee established adequate foundation.

The Trustee properly laid a foundation for Exhibit 145 though Vacco, who sent the email to Bayuk, did not appear for cross-examination. Bayuk, who was on the stand when the exhibit was presented into evidence, testified as to the authenticity of its contents and its attachments, including his own execution of the attachments following receipt of the email.[66] Appellants did not try to rebut the authenticity of Exhibit 145, nor do they now offer any legal authority for the proposition that the *sender* of an email is the only person who can properly authenticate it.

No such authority exists because that is simply not the standard for authenticating evidence. Authentication can be accomplished with any showing sufficient to support a finding that the matter in question is what the proponent claims. *See* NRS 52.015. Here, Bayuk's testimony was sufficient for the District

[66] 36 AA 6094–6097.

Court to reasonably conclude the email was a true and authentic copy, satisfying the Trustee's burden to show the email is what it purports to be.

Moreover, the email's authenticity was further established at trial through the Trustee, who described the manner in which he obtained Morabito's communications through requests at during the examination of Morabito during his creditors meeting in the Bankruptcy Case, along with subpoenas and orders compelling production.[67] Specifically, the Trustee testified regarding how the emails were obtained from Morabito's attorneys and how he became the custodian of those records by virtue of his appointment as Trustee of Morabito's bankruptcy estate, allowing the District Court to reasonably conclude that the documents represented a true and correct copy of emails from his attorneys' files. *Id*.; *see also In re Int'l Mgmt. Assocs., LLC*, 781 F.3d 1262, 1267 (11th Cir. 2015) (authentication of debtor records by bankruptcy trustee); *Sec. Inv. Sec. Inv'r Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, 592 B.R. 513 (Bankr. S.D.N.Y. 2018), *aff'd sub nom. In re Bernard L. Madoff Inv. Sec., LLC*, 605 B.R. 570 (S.D.N.Y. 2019) (trustee properly authenticated debtor's business records, noting the "the Court is not required to hear the testimony of the document's author to demonstrate its authenticity").

[67] 39 AA 7008–7011.

b. Exhibit 145 was properly admitted as a statement against interest.

The District Court did not err in admitting Exhibit 145 under either the statement against interest or statement by party opponent exception to hearsay.[68] With respect to statements against interest, NRS 51.345 provides:

> A statement which at the time of its making: (a) Was so far **contrary to the pecuniary or proprietary interest of the declarant**; (b) So far tended to subject the declarant to **civil or criminal liability**; (c) So far tended to render invalid a claim by the declarant against another; or (d) So far tended to make the declarant an object of hatred, **ridicule or social disapproval**, that a reasonable person in the position of the declarant would not have made the statement unless the declarant believed it to be true is not inadmissible under the hearsay rule if the declarant is unavailable as a witness.

(Emphasis added.)

Though Appellants argue the District Court admitted the statement as being against Bayuk's interest, that is not reflected in the trial transcript.[69] The declarant of Exhibit 145 is Vacco. The email was undoubtedly against Vacco's interest (not to mention that of his clients) because it evidences his role and participation in effectuating a fraudulent transfer, even if he did so unknowingly. His involvement could not only expose him to liability, but also expose him to pecuniary losses or

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[68] Although the Court addressed both statements against interest and admissions by party opponent, it is not clear whether the Court admitted Exhibit 145 under one or both theories. Out of abundance of caution, and because Appellants address both theories on appeal, the Trustee addresses both.

[69] *See* 36 AA 6094-96.

ridicule and social disapproval as an attorney in the community. The District Court did not abuse its discretion in finding that the email was a statement against interest and excepted from hearsay.

c. Exhibit 145 was properly admitted as an admission of a party opponent.

The District Court also properly admitted Exhibit 145 as not hearsay because it contains an admission of a party opponent.

NRS 51.035 provides:

> A statement is not hearsay if it is "offered against a party and is: (a) The party's own statement, in either the party's individual or a representative capacity; (b) A statement of which the party has manifested adoption or belief in its truth; (c) A statement by a person authorized by the party to make a statement concerning the subject; (d) A statement by the party's agent or servant concerning a matter within the scope of the party's agency or employment, made before the termination of the relationship; or (e) A statement by a coconspirator of a party during the course and in furtherance of the conspiracy."

Despite Appellants' best efforts to explain why Exhibit 145 does not constitute an admission by Bayuk, there is no denying it is. At the time of the email Vacco was Bayuk's attorney and agent, working on Bayuk's behalf; and Bayuk manifests adoption of his attorney's statement. *Kwon v. Benedetti*, No. 3:08-CV-00307-LRH, 2011 WL 4072085, at *15 (D. Nev. Sept. 12, 2011) (statements made by law firm during attorney-client relationship are admissible as non-hearsay under NRS 51.035(3)(d) and NRS 51.035(c)); *Structural Polymer Grp., Ltd. v. Zoltek Corp.*, 543 F.3d 987, 996 (8th Cir. 2008) (a statement by a party's attorney can be

admissible as an admission by a party opponent if it is relevant); *see also Reed v. Hinderland*, 135 Ariz. 213, 216, 660 P.2d 464, 467 (1983) ("Because appellant's attorney was employed as his agent to deal with the insurance company upon this very issue, the attorney's statements bind appellant as the principal).

Here, Bayuk and Morabito employed Vacco to effectuate fraudulent transfers. To that end, Vacco enclosed a set of documents for Bayuk to execute, and Bayuk executed the documents shortly upon receiving the email. Bayuk not only manifested adoption of Vacco's email, but also implemented his attorney's statement into concrete, affirmative action. The email is therefore an admission by party opponent and was properly admitted into evidence.

Appellants have failed to demonstrate that the District Court made any evidentiary errors that would justify disturbing its Judgment, much less granting a new trial.

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VII. CONCLUSION

For the foregoing reasons, the Judgment cannot and should not be disturbed. Trustee requests that the Judgment, as well as the other orders that are the subject of the appeal, be affirmed in their entirety.

Dated this 27th day of August 2020.

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Times New Roman font.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

☒ proportionally spaced, has a typeface of 14 points or more and contains: 11,298 words; or

☐ does not exceed ____ pages.

3. Finally, I hereby certify that I have read this brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 27th day of August 2020.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Respondent's Amended Answering Brief** was filed electronically with the Nevada Supreme Court on August 27, 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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4824-0243-9623, v. 8

United States Code Annotated
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part IV. Jurisdiction and Venue (Refs & Annos)
Chapter 85. District Courts; Jurisdiction (Refs & Annos)

28 U.S.C.A. § 1334

§ 1334. Bankruptcy cases and proceedings

Effective: October 17, 2005
Currentness

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

(c)(1) Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

(2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

(d) Any decision to abstain or not to abstain made under subsection (c) (other than a decision not to abstain in a proceeding described in subsection (c)(2)) is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title. Subsection (c) and this subsection shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction--

(1) of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate; and

(2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327.

CREDIT(S)

(June 25, 1948, c. 646, 62 Stat. 931; Pub.L. 95-598, Title II, § 238(a), Nov. 6, 1978, 92 Stat. 2667; Pub.L. 98-353, Title I, § 101(a), July 10, 1984, 98 Stat. 333; Pub.L. 99-554, Title I, § 144(e), Oct. 27, 1986, 100 Stat. 3096; Pub.L. 101-650, Title III, § 309(b), Dec. 1, 1990, 104 Stat. 5113; Pub.L. 103-394, Title I, § 104(b), Oct. 22, 1994, 108 Stat. 4109; Pub.L. 109-8, Title III, § 324(a), Title VIII, § 802(c)(2), Title XII, § 1219, Apr. 20, 2005, 119 Stat. 98, 145, 195.)

28 U.S.C.A. § 1334, 28 USCA § 1334
Current through P.L. 116-158.

End of Document

United States Code Annotated
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part I. Organization of Courts (Refs & Annos)
Chapter 6. Bankruptcy Judges (Refs & Annos)

28 U.S.C.A. § 157

§ 157. Procedures

Currentness

(a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

(b)(1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

(2) Core proceedings include, but are not limited to--

(A) matters concerning the administration of the estate;

(B) allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purposes of confirming a plan under chapter 11, 12, or 13 of title 11 but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11;

(C) counterclaims by the estate against persons filing claims against the estate;

(D) orders in respect to obtaining credit;

(E) orders to turn over property of the estate;

(F) proceedings to determine, avoid, or recover preferences;

(G) motions to terminate, annul, or modify the automatic stay;

(H) proceedings to determine, avoid, or recover fraudulent conveyances;

(I) determinations as to the dischargeability of particular debts;

(J) objections to discharges;

(K) determinations of the validity, extent, or priority of liens;

(L) confirmations of plans;

(M) orders approving the use or lease of property, including the use of cash collateral;

(N) orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate;

(O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims; and

(P) recognition of foreign proceedings and other matters under chapter 15 of title 11.

(3) The bankruptcy judge shall determine, on the judge's own motion or on timely motion of a party, whether a proceeding is a core proceeding under this subsection or is a proceeding that is otherwise related to a case under title 11. A determination that a proceeding is not a core proceeding shall not be made solely on the basis that its resolution may be affected by State law.

(4) Non-core proceedings under section 157(b)(2)(B) of title 28, United States Code, shall not be subject to the mandatory abstention provisions of section 1334(c)(2).

(5) The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.

(c)(1) A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, the district court, with the consent of all the parties to the proceeding, may refer a proceeding related to a case under title 11 to a bankruptcy judge to hear and determine and to enter appropriate orders and judgments, subject to review under section 158 of this title.

(d) The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

(e) If the right to a jury trial applies in a proceeding that may be heard under this section by a bankruptcy judge, the bankruptcy judge may conduct the jury trial if specially designated to exercise such jurisdiction by the district court and with the express consent of all the parties.

CREDIT(S)

(Added Pub.L. 98-353, Title I, § 104(a), July 10, 1984, 98 Stat. 340; amended Pub.L. 99-554, Title I, §§ 143, 144(b), Oct. 27, 1986, 100 Stat. 3096; Pub.L. 103-394, Title I, § 112, Oct. 22, 1994, 108 Stat. 4117; Pub.L. 109-8, Title VIII, § 802(c)(1), Apr. 20, 2005, 119 Stat. 145.)

28 U.S.C.A. § 157, 28 USCA § 157
Current through P.L. 116-158.

End of Document

United States Code Annotated
Title 11. Bankruptcy (Refs & Annos)
Chapter 5. Creditors, the Debtor, and the Estate (Refs & Annos)
Subchapter III. The Estate (Refs & Annos)

11 U.S.C.A. § 541

§ 541. Property of the estate

Effective: December 19, 2014
Currentness

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

(2) All interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is--

(A) under the sole, equal, or joint management and control of the debtor; or

(B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.

(3) Any interest in property that the trustee recovers under section 329(b), 363(n), 543, 550, 553, or 723 of this title.

(4) Any interest in property preserved for the benefit of or ordered transferred to the estate under section 510(c) or 551 of this title.

(5) Any interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date--

(A) by bequest, devise, or inheritance;

(B) as a result of a property settlement agreement with the debtor's spouse, or of an interlocutory or final divorce decree; or

(C) as a beneficiary of a life insurance policy or of a death benefit plan.

(6) Proceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case.

(7) Any interest in property that the estate acquires after the commencement of the case.

(b) Property of the estate does not include--

(1) any power that the debtor may exercise solely for the benefit of an entity other than the debtor;

(2) any interest of the debtor as a lessee under a lease of nonresidential real property that has terminated at the expiration of the stated term of such lease before the commencement of the case under this title, and ceases to include any interest of the debtor as a lessee under a lease of nonresidential real property that has terminated at the expiration of the stated term of such lease during the case;

(3) any eligibility of the debtor to participate in programs authorized under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.; 42 U.S.C. 2751 et seq.), or any accreditation status or State licensure of the debtor as an educational institution;

(4) any interest of the debtor in liquid or gaseous hydrocarbons to the extent that--

(A)(i) the debtor has transferred or has agreed to transfer such interest pursuant to a farmout agreement or any written agreement directly related to a farmout agreement; and

(ii) but for the operation of this paragraph, the estate could include the interest referred to in clause (i) only by virtue of section 365 or 544(a)(3) of this title; or

(B)(i) the debtor has transferred such interest pursuant to a written conveyance of a production payment to an entity that does not participate in the operation of the property from which such production payment is transferred; and

(ii) but for the operation of this paragraph, the estate could include the interest referred to in clause (i) only by virtue of section 365 or 542 of this title;

(5) funds placed in an education individual retirement account (as defined in section 530(b)(1) of the Internal Revenue Code of 1986) not later than 365 days before the date of the filing of the petition in a case under this title, but--

(A) only if the designated beneficiary of such account was a child, stepchild, grandchild, or stepgrandchild of the debtor for the taxable year for which funds were placed in such account;

(B) only to the extent that such funds--

(i) are not pledged or promised to any entity in connection with any extension of credit; and

(ii) are not excess contributions (as described in section 4973(e) of the Internal Revenue Code of 1986); and

(C) in the case of funds placed in all such accounts having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed $5,000[1];

(6) funds used to purchase a tuition credit or certificate or contributed to an account in accordance with section 529(b)(1)(A) of the Internal Revenue Code of 1986 under a qualified State tuition program (as defined in section 529(b)(1) of such Code) not later than 365 days before the date of the filing of the petition in a case under this title, but--

(A) only if the designated beneficiary of the amounts paid or contributed to such tuition program was a child, stepchild, grandchild, or stepgrandchild of the debtor for the taxable year for which funds were paid or contributed;

(B) with respect to the aggregate amount paid or contributed to such program having the same designated beneficiary, only so much of such amount as does not exceed the total contributions permitted under section 529(b)(6) of such Code with respect to such beneficiary, as adjusted beginning on the date of the filing of the petition in a case under this title by the annual increase or decrease (rounded to the nearest tenth of 1 percent) in the education expenditure category of the Consumer Price Index prepared by the Department of Labor; and

(C) in the case of funds paid or contributed to such program having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed $5,000[1];

(7) any amount--

(A) withheld by an employer from the wages of employees for payment as contributions--

(i) to--

(I) an employee benefit plan that is subject to title I of the Employee Retirement Income Security Act of 1974 or under an employee benefit plan which is a governmental plan under section 414(d) of the Internal Revenue Code of 1986;

(II) a deferred compensation plan under section 457 of the Internal Revenue Code of 1986; or

(III) a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986;

except that such amount under this subparagraph shall not constitute disposable income as defined in section 1325(b)(2); or

(ii) to a health insurance plan regulated by State law whether or not subject to such title; or

(B) received by an employer from employees for payment as contributions--

(i) to--

(I) an employee benefit plan that is subject to title I of the Employee Retirement Income Security Act of 1974 or under an employee benefit plan which is a governmental plan under section 414(d) of the Internal Revenue Code of 1986;

(II) a deferred compensation plan under section 457 of the Internal Revenue Code of 1986; or

(III) a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986;

except that such amount under this subparagraph shall not constitute disposable income, as defined in section 1325(b)(2); or

(ii) to a health insurance plan regulated by State law whether or not subject to such title;

(8) subject to subchapter III of chapter 5, any interest of the debtor in property where the debtor pledged or sold tangible personal property (other than securities or written or printed evidences of indebtedness or title) as collateral for a loan or advance of money given by a person licensed under law to make such loans or advances, where--

(A) the tangible personal property is in the possession of the pledgee or transferee;

(B) the debtor has no obligation to repay the money, redeem the collateral, or buy back the property at a stipulated price; and

(C) neither the debtor nor the trustee have exercised any right to redeem provided under the contract or State law, in a timely manner as provided under State law and section 108(b);

(9) any interest in cash or cash equivalents that constitute proceeds of a sale by the debtor of a money order that is made--

(A) on or after the date that is 14 days prior to the date on which the petition is filed; and

(B) under an agreement with a money order issuer that prohibits the commingling of such proceeds with property of the debtor (notwithstanding that, contrary to the agreement, the proceeds may have been commingled with property of the debtor),

unless the money order issuer had not taken action, prior to the filing of the petition, to require compliance with the prohibition; or

(10) funds placed in an account of a qualified ABLE program (as defined in section 529A(b) of the Internal Revenue Code of 1986) not later than 365 days before the date of the filing of the petition in a case under this title, but--

(A) only if the designated beneficiary of such account was a child, stepchild, grandchild, or stepgrandchild of the debtor for the taxable year for which funds were placed in such account;

(B) only to the extent that such funds--

(i) are not pledged or promised to any entity in connection with any extension of credit; and

(ii) are not excess contributions (as described in section 4973(h) of the Internal Revenue Code of 1986); and

(C) in the case of funds placed in all such accounts having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed $6,225[1].

Paragraph (4) shall not be construed to exclude from the estate any consideration the debtor retains, receives, or is entitled to receive for transferring an interest in liquid or gaseous hydrocarbons pursuant to a farmout agreement.

(c)(1) Except as provided in paragraph (2) of this subsection, an interest of the debtor in property becomes property of the estate under subsection (a)(1), (a)(2), or (a)(5) of this section notwithstanding any provision in an agreement, transfer instrument, or applicable nonbankruptcy law--

(A) that restricts or conditions transfer of such interest by the debtor; or

(B) that is conditioned on the insolvency or financial condition of the debtor, on the commencement of a case under this title, or on the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement, and that effects or gives an option to effect a forfeiture, modification, or termination of the debtor's interest in property.

(2) A restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable nonbankruptcy law is enforceable in a case under this title.

(d) Property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest, such as a mortgage secured by real property, or an interest in such a mortgage, sold by the debtor but as to which the debtor retains legal title to service or supervise the servicing of such mortgage or interest, becomes property of the estate under subsection (a)(1) or (2) of this section only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold.

(e) In determining whether any of the relationships specified in paragraph (5)(A) or (6)(A) of subsection (b) exists, a legally adopted child of an individual (and a child who is a member of an individual's household, if placed with such individual by an authorized placement agency for legal adoption by such individual), or a foster child of an individual (if such child has as the child's principal place of abode the home of the debtor and is a member of the debtor's household) shall be treated as a child of such individual by blood.

(f) Notwithstanding any other provision of this title, property that is held by a debtor that is a corporation described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code may be transferred to an entity that is not such a corporation, but only under the same conditions as would apply if the debtor had not filed a case under this title.

CREDIT(S)

(Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2594; Pub.L. 98-353, Title III, §§ 363(a), 456, July 10, 1984, 98 Stat. 363, 376; Pub.L. 101-508, Title III, § 3007(a)(2), Nov. 5, 1990, 104 Stat. 1388-28; Pub.L. 102-486, Title XXX, § 3017(b), Oct. 24, 1992, 106 Stat. 3130; Pub.L. 103-394, Title II, §§ 208(b), 223, Oct. 22, 1994, 108 Stat. 4124, 4129; Pub.L. 109-8, Title II, § 225(a), Title III, § 323, Title XII, §§ 1212, 1221(c), 1230, Apr. 20, 2005, 119 Stat. 65, 97, 194, 196, 201; Pub.L. 111-327, § 2(a)(22), Dec. 22, 2010, 124 Stat. 3560; Pub.L. 113-295, Div. B, Title I, § 104(a), Dec. 19, 2014, 128 Stat. 4063.)

Footnotes

1 See Adjustment of Dollar Amounts notes set out under this section and 11 U.S.C.A. § 104.

11 U.S.C.A. § 541, 11 USCA § 541

Current through P.L. 116-158.

End of Document

United States Code Annotated
Title 11. Bankruptcy (Refs & Annos)
Chapter 5. Creditors, the Debtor, and the Estate (Refs & Annos)
Subchapter III. The Estate (Refs & Annos)

11 U.S.C.A. § 544

§ 544. Trustee as lien creditor and as successor to certain creditors and purchasers

Effective: June 19, 1998
Currentness

(a) The trustee shall have, as of the commencement of the case, and without regard to any knowledge of the trustee or of any creditor, the rights and powers of, or may avoid any transfer of property of the debtor or any obligation incurred by the debtor that is voidable by--

(1) a creditor that extends credit to the debtor at the time of the commencement of the case, and that obtains, at such time and with respect to such credit, a judicial lien on all property on which a creditor on a simple contract could have obtained such a judicial lien, whether or not such a creditor exists;

(2) a creditor that extends credit to the debtor at the time of the commencement of the case, and obtains, at such time and with respect to such credit, an execution against the debtor that is returned unsatisfied at such time, whether or not such a creditor exists; or

(3) a bona fide purchaser of real property, other than fixtures, from the debtor, against whom applicable law permits such transfer to be perfected, that obtains the status of a bona fide purchaser and has perfected such transfer at the time of the commencement of the case, whether or not such a purchaser exists.

(b)(1) Except as provided in paragraph (2), the trustee may avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is voidable under applicable law by a creditor holding an unsecured claim that is allowable under section 502 of this title or that is not allowable only under section 502(e) of this title.

(2) Paragraph (1) shall not apply to a transfer of a charitable contribution (as that term is defined in section 548(d)(3)) that is not covered under section 548(a)(1)(B), by reason of section 548(a)(2). Any claim by any person to recover a transferred contribution described in the preceding sentence under Federal or State law in a Federal or State court shall be preempted by the commencement of the case.

CREDIT(S)

(Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2596; Pub.L. 98-353, Title III, § 459, July 10, 1984, 98 Stat. 377; Pub.L. 105-183, § 3(b), June 19, 1998, 112 Stat. 518.)

11 U.S.C.A. § 544, 11 USCA § 544
Current through P.L. 116-158.

West's Nevada Revised Statutes Annotated
Title 4. Witnesses and Evidence (Chapters 47-56) (Refs & Annos)
Chapter 49. Privileges (Refs & Annos)
Lawyer and Client (Refs & Annos)

N.R.S. 49.095

49.095. General rule of privilege

Currentness

A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications:

1. Between the client or the client's representative and the client's lawyer or the representative of the client's lawyer.

2. Between the client's lawyer and the lawyer's representative.

3. Made for the purpose of facilitating the rendition of professional legal services to the client, by the client or the client's lawyer to a lawyer representing another in a matter of common interest.

Credits
Added by Laws 1971, p. 783.

N. R. S. 49.095, NV ST 49.095
Current through the end of both the 31st and 32nd Special Sessions (2020) subject to change from the reviser of the Legislative Bureau.

End of Document

West's Nevada Revised Statutes Annotated
Title 4. Witnesses and Evidence (Chapters 47-56) (Refs & Annos)
Chapter 49. Privileges (Refs & Annos)
Lawyer and Client (Refs & Annos)

N.R.S. 49.115

49.115. Exceptions

Currentness

There is no privilege under NRS 49.095 or 49.105:

1. If the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud.

2. As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction.

3. As to a communication relevant to an issue of breach of duty by the lawyer to his or her client or by the client to his or her lawyer.

4. As to a communication relevant to an issue concerning an attested document to which the lawyer is an attesting witness.

5. As to a communication relevant to a matter of common interest between two or more clients if the communication was made by any of them to a lawyer retained or consulted in common, when offered in an action between any of the clients.

Credits
Added by Laws 1971, p. 783.

N. R. S. 49.115, NV ST 49.115
Current through the end of both the 31st and 32nd Special Sessions (2020) subject to change from the reviser of the Legislative Bureau.

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West's Nevada Revised Statutes Annotated
Title 13. Guardianships; Conservatorships; Trusts (Chapters 158-167)
Chapter 164. Administration of Trusts (Refs & Annos)
General Provisions

N.R.S. 164.010

164.010. Petition for assumption of jurisdiction; circumstances in which trust is domiciled in this State; determination of venue; powers of court; petition for removal of trust from jurisdiction of court

Effective: October 1, 2017
Currentness

1. Upon petition of any person appointed as trustee of an express trust by any written instrument other than a will, or upon petition of a settlor or beneficiary of the trust, the district court of the county in which any trustee resides or conducts business at the time of the filing of the petition or in which the trust has been domiciled as of the time of the filing of the petition shall assume jurisdiction of the trust as a proceeding in rem unless another court has properly assumed continuing jurisdiction in rem in accordance with the laws of that jurisdiction and the district court determines that it is not appropriate for the district court to assume jurisdiction under the circumstances.

2. For the purposes of this section, a trust is domiciled in this State notwithstanding that the trustee neither resides nor conducts business in this State if:

(a) The trust instrument expressly provides that the situs of the trust is in this State or that a court in this State has jurisdiction over the trust;

(b) A person has designated for the trust that this State is the situs or has jurisdiction, if such person made the designation at a time during which he or she held the power to make such a designation under the express terms of the trust instrument;

(c) The trust owns an interest in real property located in this State;

(d) The trust owns personal property, wherever situated, if the trustee is:

(1) Incorporated or authorized to do business in this State;

(2) A trust company licensed under chapter 669 of NRS;

(3) A family trust company, as defined in NRS 669A.080; or

(4) A national association having an office in this State;

(e) One or more beneficiaries of the trust reside in this State; or

(f) At least part of the administration of the trust occurs in this State.

3. Notwithstanding the provisions of this section, if a court of a jurisdiction other than this State has jurisdiction over a trust and grants an order authorizing a transfer of jurisdiction over that trust to this State, the district court has the power to assume jurisdiction over the trust and to otherwise supervise the administration of that trust in accordance with the procedures set forth in this title.

4. For the purposes of determining venue, preference is given in the following order:

(a) To the county in which the situs or domicile was most recently declared by a person granted the power to make such a declaration under the terms of the trust instrument at the time of the filing of the petition;

(b) To the county in which the situs or domicile is declared in the trust instrument; and

(c) To the county in which the situs or domicile is declared by the trustee at the time of the filing of the petition in a certification of the trust which complies with subsection 2 of NRS 164.400 and subsection 2 of NRS 164.410 and which contains a declaration of the trust's situs or domicile as authorized in subsection 1 of NRS 164.410.

5. When the court assumes jurisdiction pursuant to this section, the court:

(a) Has jurisdiction of the trust as a proceeding in rem as of the date of the filing of the petition;

(b) Shall be deemed to have personal jurisdiction over any trustee confirmed by the court and any person appearing in the matter, unless such an appearance is made solely for the purpose of objecting to the jurisdiction of the court;

(c) May confirm at the same time the appointment of the trustee and specify the manner in which the trustee must qualify; and

(d) May consider at the same time granting orders on other matters relating to the trust, including, without limitation, matters that might be addressed in a declaratory judgment relating to the trust under subsection 2 of NRS 30.040 or petitions filed pursuant to NRS 153.031 or 164.015 whether such matters are raised in the petition to assume jurisdiction pursuant to this section or in one or more separate petitions that are filed concurrently with the petition to assume jurisdiction.

6. At any time, the trustee may petition the court for removal of the trust from continuing jurisdiction of the court.

7. As used in this section, "written instrument" includes, without limitation, an electronic trust as defined in NRS 163.0015.

Credits

Added by Laws 1953, c. 22, § 1. NRS amended by Laws 1961, p. 400; Laws 1999, c. 467, § 514; Laws 2001, c. 458, § 45; Laws 2015, c. 524, § 63, eff. Oct. 1, 2015; Laws 2017, c. 311, § 51, eff. Oct. 1, 2017.

N. R. S. 164.010, NV ST 164.010

Current through the end of both the 31st and 32nd Special Sessions (2020) subject to change from the reviser of the Legislative Bureau.

End of Document

N.R.S. 164.015

164.015. Petition concerning internal affairs of nontestamentary trust; jurisdiction of court; procedure for contests of certain trusts; final order; appeal

Effective: October 1, 2015
Currentness

1. The court has exclusive jurisdiction of proceedings initiated by the petition of an interested person concerning the internal affairs of a nontestamentary trust, including a revocable living trust while the settlor is still living if the court determines that the settlor cannot adequately protect his or her own interests or if the interested person shows that the settlor is incompetent or susceptible to undue influence. Proceedings which may be maintained under this section are those concerning the administration and distribution of trusts, the declaration of rights and the determination of other matters involving trustees and beneficiaries of trusts, including petitions with respect to a nontestamentary trust for any appropriate relief provided with respect to a testamentary trust in NRS 153.031 and petitions for a ruling that property not formally titled in the name of a trust or its trustee constitutes trust property pursuant to NRS 163.002.

2. A petition under this section or subsection 2 of NRS 30.040 that relates to a trust may be filed in conjunction with a petition under NRS 164.010 or at any time after the court has assumed jurisdiction under that section.

3. If an interested person contests the validity of a revocable nontestamentary trust, the interested person is the plaintiff and the trustee is the defendant. The written grounds for contesting the validity of the trust constitutes a pleading and must conform with any rules applicable to pleadings in a civil action. This subsection applies whether the person contesting the validity of the trust is the petitioner or the objector and whether or not the opposition to the validity of the trust is asserted under this section or subsection 2 of NRS 30.040.

4. In a proceeding pursuant to subsection 3, the competency of the settlor to make the trust, the freedom of the settlor from duress, menace, fraud or undue influence at the time of execution of the will, the execution and attestation of the trust instrument, or any other question affecting the validity of the trust is a question of fact and must be tried by the court, subject to the provisions of subsection 5.

5. A court may consolidate the cases if there is a contest of a revocable nontestamentary trust and a contest relating to a will executed on the same date. If a jury is demanded pursuant to NRS 137.020 for the contest of the will, the court may instruct the jury to render an advisory opinion with respect to an issue of fact pursuant to subsection 4 in the contest of the trust.

6. Upon the hearing, the court shall enter such order as it deems appropriate. The order is final and conclusive as to all matters determined and is binding in rem upon the trust estate and upon the interests of all beneficiaries, vested or contingent, except that appeal to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution may be taken from the order within 30 days after notice of its entry by filing notice of appeal with the clerk of the district court. The appellant shall mail a copy of the notice to each person who has appeared of record. If the proceeding was brought pursuant to subsection 3, 4 or 5, the court must also award costs pursuant to chapter 18 of NRS.

7. Except as otherwise ordered by the court, a proceeding under this section does not result in continuing supervisory proceedings, and the administration of the trust must proceed expeditiously in a manner consistent with the terms of the trust, without judicial intervention or the order, approval or other action of any court, unless the jurisdiction of the court is invoked by an interested person or exercised as provided by other law.

8. As used in this section, "nontestamentary trust" has the meaning ascribed to it in NRS 163.0016.

Credits

Added by Laws 1999, c. 467, § 512. Amended by Laws 2009, c. 215, § 51; Laws 2013, c. 343, § 104, eff. Jan. 1, 2015; Laws 2015, c. 524, § 64, eff. Oct. 1, 2015.

N. R. S. 164.015, NV ST 164.015

Current through the end of both the 31st and 32nd Special Sessions (2020) subject to change from the reviser of the Legislative Bureau.

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