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Clippers Trust Precedents Leave Probate Attorneys Buzzing

Amanda Bronstad, The National Law Journal

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Monday's tentative ruling in the battle over the Los Angeles Clippers centered on two arcane provisions of California probate law. Attorneys who specialize in trusts and estates said the precedents that resulted would prove useful even when billions of dollars aren't at stake.

Los Angeles County, Calif., Judge Michael Levanas rejected Clippers owner Donald Sterling's argument that his estranged wife, Shelly Sterling, conspired with her attorneys to oust him from the family trust that owns the team in furtherance of a \$2 billion sale to former Microsoft chief executive officer Steve Ballmer.

But Shelly Sterlings' case was far from a slam dunk. Her lawyers—neither a probate specialist—had to convince Levanas to set two precedents.

One involved California Probate Code 1310b, which allows a trustee to immediately move forward with an action, regardless of any appeal of a judge's order, if necessary to prevent "injury or loss" to a trust or estate. In reaching his decision, Levanas concluded that absent the Ballmer deal, "the Clippers would suffer a massive loss in value."

Such a ruling would "set an untenable precedent," Donald Sterling's attorney, Stefanie Cutler of Bloom & Rutenberg in Los Angeles, had insisted. "Shelly receiving less money for the Clippers is not the type of loss contemplated by the Legislature."

But probate attorneys said the ruling would prove helpful in the future. "It's one more tool we have in our toolkit for the appropriate time," said Stuart Zimring, chairman of the trust & estates section of the Los Angeles County Bar Association.

"On a regular basis, we have trust disputes where there are sales of real estate pending—certainly not on the order of magnitude of the sale of the Clippers but, should circumstances warrant, we might make use of the section to keep things moving," said Larry Dushkes, senior counsel at Manning & Kass, Ellrod, Ramirez, Trester in Los Angeles.

Dushkes, who acknowledged he hadn't even been aware of the section before, said the precedent could prove helpful in cases involving music copyright licenses, which lose value

over time. And it could affect the sale of unique assets, like art or rights to literary works, said Zimring, of the Law Offices of Stuart D. Zimring in Los Angeles, who has attempted to apply the section once before.

The second ruling involved Probate Code 17200, which allows trustees to petition the court to resolve disputes. Since Donald Sterling had revoked the trust at the time of the Ballmer sale, it wasn't clear whether Levanas—overseeing a petition filed by Shelly Sterling and Ballmer—held jurisdiction.

Acknowledging he could find “no case law directed on point to answer this question,” Levanas turned to the language of Probate Code 15407b, which gives a trustee the power to “wind up the affairs” of a terminated trust.

Most trustees of terminated trusts simply ask a court to oversee actions including the settlement of debts, collection of interest or other small matters, said Steven Hogan of Lurie, Zepeda, Schmalz & Hogan in Beverly Hills. Shelly Sterling, on the other hand, was attempting to sell a basketball team with a revoked trust.

“It significantly expands the powers of a trustee under a terminated trust to transact business and take certain actions,” he said. “That’s going to make new law.”

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