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CLIENT ALERT: ENFORCEMENT OF A NO-CONTEST CLAUSE

Highlighted by *Meiri v. Shamtoubi*

Courts are often reluctant to enforce no-contest clauses in estate and probate matters. As noted in our prior alert on the Connecticut Appellate Court case *Salce v. Cardello*, even where the terms of the no-contest clause appear to have been breached, the enforcement of a no-contest clause can be a wildcard, especially where a Probate Court can cite its “equitable” powers to fashion an outcome. However, a recent California case provides an illustration of a court enforcing a no-contest clause, based on a beneficiary’s procedural misstep, and not on the merits or substance of the challenge itself.

In *Meiri v. Shamtoubi*, 297 Cal. Rptr. 3d 397 (Cal. App. 2022), a husband and wife created a joint trust in the mid-1990s with several subsequent amendments/restatements. The trust contained a detailed no-contest clause prohibiting any “direct contest” to the trust’s validity. “Direct contest” was defined in the trust as “a pleading filed in any court that alleges the invalidity of a Document, or one or more of the terms of a Document, on one or more of the following grounds: (1) revocation, (2) lack of capacity, (3) fraud, (4) misrepresentation, (5) menace, (6) duress, (7) undue influence, (8) mistake, (9) lack of due execution, and (10) forgery.”

After the husband died, the surviving spouse, as trustee and lifetime beneficiary of the trust, gave notice to the remaindermen that California law allows 120 days to contest the trust. One of the remaindermen (the decedent’s daughter) waited 230 days before seeking to invalidate a particular restatement of the trust, claiming lack of capacity of her father, undue influence, and fraud – three of the ten triggers listed in the no-contest clause.

In presenting her claims, the daughter cited a California Probate Code section that prevented forfeiture of her beneficial interest if her basis for contesting the trust was supported by “probable cause.” She argued that the untimeliness of her filing was irrelevant to the determination of probable cause. The trustee argued that the daughter lacked probable cause because she failed to comply with the 120-day

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limitations period, and the Court agreed. The Court held that because the challenging party missed the deadline, she lacked probable cause to support her claim and therefore forfeited her beneficial interest. This is a curious result – that timeliness, which is normally a procedural issue, can mean the lack of probable cause, which is normally a substantive issue.

Cases such as *Meiri* highlight the unpredictability in the enforcement of no-contest clauses. Courts struggle with the specific factual scenarios and equitable considerations, weighing the testator's wishes against the harsh remedy of disinheritance of a beneficiary. In this instance, the Court made a direct connection between timeliness and probable cause, which could allow for more successful enforcement of no-contest clauses based on what ordinarily may be considered procedural defects by the claimant.

This publication is a summary of legal principles. Nothing in this article constitutes legal advice, which can only be obtained as a result of a personal consultation with an attorney. The information published here is believed accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues.