IN THE SUPREME COURT OF THE STATE OF NEVADA

RUTH SWEETLAND AND MARK SWEETLAND, AS CO-TRUSTEES OF THE TESTAMENTARY TRUST OF JACK SWEETLAND,
Appellants,
vs.
PETER DAVIS SWEETLAND,
Respondent.

No. 39441

FILED

NOV 0 4 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from the district court's order granting respondent Peter Sweetland's motion to dismiss for failure to state a claim upon which relief could be granted.[1] Ernest John ("Jack") Sweetland, the father of appellants Ruth and Mark and respondent Peter,[2] granted to each child a deed for a one-ninetieth interest, as tenants in common, in property he owned at Lake Tahoe. He then established a living trust and transferred title to the property to the trust. As trustee, he gave three more deeds for a one-ninetieth interest in the property to each of his children, for a total of four-ninetieths interest per child. When he died, title to the property was conveyed from the living trust to his testamentary trust, of which each child was a twenty-five percent beneficiary. Two of his children were appointed trustees of the testamentary trust. Probate was settled in California, all of the children were properly noticed of the probate proceedings, and the court approved conveyance of the property to the testamentary trust. Nine years after the

[1]NRCP 12(b)(5).

[2]Jack had four children and had executed a deed for each child. His son, Earnest John Sweetland III, is not a named party in this case.

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final settlement of probate, Jack's son, Peter, recorded the deeds that had been given to him prior to Jack's death. The trustees of the testamentary trust sued Peter for declaratory relief, to quiet title to the property and to remove the cloud on the title caused by Peter's recorded deed. The trustees alleged that Peter's prior deeds were null and void and that his sole interest in the property was as a beneficiary of the trust. Peter moved to dismiss the complaint for failure to state a claim upon which relief could be granted. The district court granted the motion to dismiss with prejudice. We reverse.

In reviewing an order granting a motion to dismiss for failure to state a claim for relief, we must liberally construe the pleadings, accepting all factual allegations in the complaint as true and drawing all reasonable inferences in favor of the non-moving party.[3] We will not affirm the dismissal of a complaint for failure to state a claim "'unless it appears beyond a doubt that the plaintiff could prove no set of facts which, if accepted by the trier of fact, would entitle him or her to relief.'"[4]

The trustees claim that the district court erred by concluding that they could prove no set of facts that would entitle them to relief for slander of title because the complaint alleges facts which if true, make out a prima facie case for slander of title. The complaint alleges that the testamentary trust is the lawful owner of the Lake Tahoe property and title is vested in it; that in spite of having notice of the probate proceedings, Peter never objected to the disposition, and, nine years later,

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[3]Blackjack Bonding v. Las Vegas Mun. Ct., 116 Nev. 1213, 1217, 14 P.3d 1275, 1278 (2000).

[4]Id. (quoting Simpson v. Mars Inc., 113 Nev. 188, 190, 929 P.2d 966, 967 (1997)).

Peter recorded deeds purporting to convey a percentage interest in the property to him; that the recorded documents have clouded the title; and that the trust has suffered special damages as a result. Appellants argue that if the district court had accepted the allegations as true and made reasonable inferences in the trust's favor as the court is obligated to do,[5] the court would have properly inferred from those facts that Peter's recordation of the deeds nine years after the probate proceedings had been concluded was subject to claims for fraud, promissory estoppel, judicial estoppel, and breach of contract.

"Slander of title involves false and malicious communications" that disparage one's title in land, and from which special damages result.[6] Appellants must show that respondent made the statement with knowledge that it was false, or with reckless disregard as to its truth or falsity.[7] This court has held that the act of recording the disparaging document is sufficient publication for accrual of the cause of action for slander of title.[8]

Here, the trustees alleged that the documents that Peter recorded were null and void; that Peter participated in the probate proceedings and never objected to conveying the title to the testamentary trust; that Peter's only interest in the property was as a beneficiary of the testamentary trust; and that Peter recorded the deeds, creating a cloud on

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[5]Blackjack Bonding, 116 at 1271, 14 P.3d at 1278.

[6]Higgins v. Higgins, 103 Nev. 443, 445, 744 P.2d 530, 531 (1987); see also Rowland v. Lepire, 99 Nev. 308, 313, 662 P.2d 1332, 1335 (1983).

[7]Rowland, 99 Nev. at 313, 662 P.2d at 1335.

[8]See Summa Corp. v. Greenspun, 98 Nev. 528, 531, 655 P.2d 513, 514 (1982).

the property's title and consequently causing the loss of rental revenue and delays in the subdivision of a portion of the property. It can reasonably be inferred from the allegations that Peter's act of recording was malicious, because Peter knew that the probate proceedings conveyed all of the property to the trust and yet he failed to object in that proceeding or by any other means during that time period. Instead, Peter waited nine years to record deeds that had been given to him prior to his father's death. If such inference is made, then the doctrines of laches,[9] equitable estoppel[10] and judicial estoppel[11] may afford the trustees relief.

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[9]Laches is an equitable doctrine which a party may invoke when another party's delay has prejudiced the first party's rights and granting relief to the delaying party would be inequitable. However, to invoke laches, the nondelaying party must show that the delay caused actual prejudice. Besnilian v. Wilkinson, 117 Nev. 519, 522, 25 P.3d 187, 189 (2001). Here, the trustees have alleged actual prejudice in the form of lost rents and delays in subdivision of the property.

[10]The elements of equitable estoppel include:

> "(1) the party to be estopped must be apprised of the true facts; (2) he must intend that his conduct shall be acted upon or must so act that the party asserting estoppel has the right to believe it was so intended; (3) the party asserting estoppel must be ignorant of the true state of facts; (4) he must have relied to his detriment on the conduct of the party to be estopped." [Moreover,] "[w]hether these elements are present . . . depends upon the particular facts and circumstances of a given case."

NGA #2 Ltd. Liab. Co. v. Rains, 113 Nev. 1151, 1160, 946 P.2d 163, 169 (1997) (quoting Cheqer, Inc. v. Painters & Decorators, 98 Nev. 609, 614, 655 P.2d 996, 998-99 (1982)).

[11]See Breliant v. Preferred Equities Corp., 112 Nev. 663, 668, 918 P.2d 314, 317 (1996) (stating that ""[u]nder the doctrine of judicial

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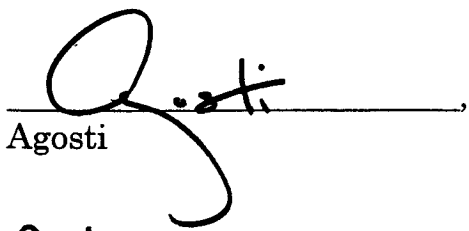
Furthermore, the trustees alleged that Peter's interest in the property resulted solely from the trust. If true, this allegation supports a finding that the other deeds were null and void, and that Peter wrongfully recorded them.

Because we conclude that the complaint sufficiently states a claim for relief, we decline to address the trustee's other arguments. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.



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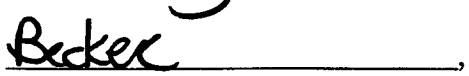

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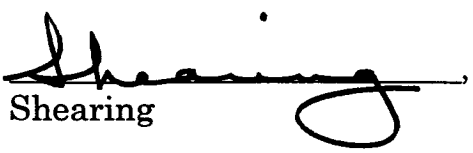

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Shearing

cc: Hon. Michael P. Gibbons, District Judge
Allison, MacKenzie, Russell, Pavlakis, Wright & Fagan, Ltd.
Bradley Paul Elley
Douglas County Clerk

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estoppel a party may be estopped merely by the fact of having alleged or admitted in his pleadings in a former proceeding the contrary of the assertion sought to be made"" (quoting Sterling Builders, Inc. v. Fuhrman, 80 Nev. 543, 549, 396 P.2d 850, 854 (1964) (quoting 31 C.J.S. Estoppel § 121 at 649)).