

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

HARBOR PIPE & STEEL, INC.,

Plaintiff and Appellant,

v.

DANIEL STEVENS et al.,

Defendants and Respondents.

G035530

(Super. Ct. No. 02CC07007)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Sheila Fell, Judge. Reversed and remanded.

Edward M. Picozzi for Plaintiff and Appellant.

White O'Connor Curry, Keri E. Borders and Jennifer B. Hodulik, for Defendants and Respondents.

Harbor Pipe and Steel appeals from a summary judgment entered against it on its causes of action for quiet title and declaratory relief. Harbor Pipe asserts its recorded abstract of judgment against Dale Sarver established a lien against the assets held by Sarver's self-settled revocable family trust, and there is evidence that respondents Daniel and Michelle Stevens, subsequent purchasers of a home owned by that trust, took their title with constructive notice of Harbor Pipe's lien. We agree.

Under California law, all assets held by a revocable trust are automatically subject to the debts and obligations of the trust's settlor. Thus, any person taking title to property from such a trust is on notice that the property is subject to any judgments recorded not only against the trust itself, but also against the settlor. In this case, documents within the property's chain of title expressly revealed the trust was revocable, and that the Sarvers were its settlors. That meant the Stevenses were on notice that the property they were purchasing would be subject to any liens created by an abstract of judgment recorded not only against the trust itself, but also against either of the Sarvers. Consequently, they had a duty to inquire as to the existence of such liens, and are deemed to have constructive notice of any facts that would have been uncovered through such an inquiry – including (presumably) the existence of the underlying judgment at issue here. The summary judgment is reversed.

* * *

Dale Sarver and his wife, Gloria, deeded the property at issue in this case to the Sarver Family Trust on January 6, 1999. It was the fourth time they had done so. The Sarvers first transferred the property to their trust in August of 1990. The deed conveying that interest specifically identifies the trust as a “revocable trust for the benefit of the grantor(s).” In October of 1991, the trust (acting through the Sarvers, in their roles as trustees) transferred the property back to the Sarvers, who almost immediately transferred it back into the trust once again. The first of those two deeds expressly reflects that the transfer is for “no consideration,” and is merely a transfer of “the

grantor's interest out of trust and to themselves as individuals only, change in status.” The second deed states “this conveyance transfers the grantor's interest into his or her revocable living trust. . . .”

In July of 1998, the property once again was transferred from the trust to the Sarvers, and from the Sarvers back to the trust, all in the same day.¹ Both of those deeds reflect the transfers are “interfamily” and without consideration. In December of 1998, the trust transferred the property back to the Sarvers for the last time, again reflecting “no consideration.” They bounced it right back into the trust the following month.

In March of 1999, two months after the Sarver's final transfer of their property back into the trust, Harbor Pipe filed its lawsuit against Dale Sarver. A default judgment was entered against Sarver, in the approximate amount of \$64,000, in February of 2000. Harbor Pipe then recorded an abstract of its judgment against Sarver in October of 2000.

Subsequently, in May of 2001, the trust, acting through the Sarvers as trustees, sold the property to the Stevenses. In connection with that sale, the Stevenses' title insurer conducted a title search of the property, and a search of records pertaining to the trust itself. Those searches revealed no recorded judgments or liens against either. However, no search was conducted regarding any extant judgments or liens against either Dale or Gloria Sarver.

In May of 2002, Harbor Pipe filed this action, alleging that the recordation of its abstract of judgment against Dale Sarver imposed a lien on all properties in which Sarver held an interest, including the property owned by his revocable trust. The Stevenses answered the complaint, denying its allegations and alleging as a defense that

¹ Although executed on the same date in July of 1998, those deeds were recorded at different time – the first in July and the second in November of 1998.

they took title to the property as innocent purchasers, without notice of Harbor Pipe's lien.

In April of 2003, the Stevenses moved for summary judgment. They argued that undisputed facts demonstrated the property at issue had been owned by the trust prior to the entry of Harbor Pipe's judgment against Sarver, and that the abstract reflecting the existence of that judgment consequently does not appear in the chain of title for the property. Citing *Far West Saving & Loan Assn. v. McLaughlin* (1988) 201 Cal.App.3d 67, 73, the Stevenses asserted they had constructive notice of only those documents revealed by a chain of title search relating to their property, and were "under no obligation to search the records beyond interests affecting the Trust, as grantor of the Property."

Harbor Pipe, in its opposition to the motion, asserted that the Stevenses were on notice that the trust was revocable, and are deemed to have knowledge of California law, which provides that (1) assets held in a revocable trust are available to satisfy outstanding judgments against the trust's settlor, to the same extent as if they were held in the settlor's own name (Prob. Code, § 18200); and (2) judgment liens against the settlors thus attach to such property (Code Civ. Proc., § 697.340, subd. (a)). In light of those facts, Harbor Pipe argued a reasonably prudent person in the Stevenses' position would have checked the public records for evidence of such liens, and should be held to have constructive notice of the information that would have been revealed by such an inquiry.

The court, after considering those arguments, granted the motion. In a written order, the court reasoned that any recorded document which exists outside the chain of title for a property imparts no constructive notice to a subsequent purchaser of the property. Because the abstract of judgment recorded against Dale Sarver individually was not revealed in a chain of title search, the Stevenses had no constructive notice of it and took the property free of that lien.

I

Initially, we note there is no dispute that Sarver was not entitled to shield his assets from creditors by transferring them into a revocable family trust. All property owned by a revocable trust is legally subject to the debts of its settlor. Probate Code section 18200 provides: “If the settlor retains the power to revoke the trust in whole or in part, the trust property is subject to the claims of creditors of the settlor to the extent of the power of revocation during the lifetime of the settlor.”²

As explained in *Bank One Texas v. Pollack* (1994) 24 Cal.App.4th 973, 980, a judgment lien created by an abstract of judgment recorded against the settlor of a revocable trust attaches directly to the assets contained within the trust, without any need to amend the judgment so as to include the trust as a judgment debtor. In essence, California law treats the assets transferred by a settlor into a revocable trust as though the assets were still held in the settlor’s name individually.

In *Galdjie v. Darwish* (2003) 113 Cal.App.4th 1331, the court concluded that a specific performance action seeking to compel the settlors/trustees of a revocable trust, *in their individual capacities*, to convey title to property held in the trust, was not fatally flawed. As the court explained: “a revocable inter vivos trust is a probate avoidance device, but does not prevent creditors of the settlors – who are often also the trustees and the sole beneficiaries during their lifetimes – from reaching trust property.” (*Id.* at p. 1349.)

In *Gagan v. Gouyd* (1999) 73 Cal.App.4th 835, 842 (disapproved on other grounds in *Mejia v. Reed* (2003) 31 Cal.4th 657, 669) the court went so far as to conclude that a transfer of property to a revocable trust could not constitute a fraudulent conveyance under the Uniform Fraudulent Transfer Act (Civ. Code, §§ 3439 et seq.), because the transaction “*did not result in ‘disposing of or parting with an asset or an*

² Probate Code section 263, subdivision (b)(3) defines a “settlor” as the person who “establishes, declares, creates, or otherwise brings into existence an interest” created under a trust. (*Id.*, subd. (a).)

interest in an asset.’ The property remained available to creditors.” (*Id.* at p. 842, italics added.)

Clearly, then, Sarver’s transfer of the property into his revocable family trust could not in any way shield that property from enforcement of Harbor Pipe’s judgment against him individually. Had the property remained under the trust’s ownership, there is no question Harbor Pipe could have claimed it.

But the property was no longer owned by the trust; instead, before Harbor Pipe made any effort to foreclose on its lien, the trust sold the property to the Stevenses. Thus, the sole issue in this case is whether the Stevenses are protected from enforcement of that lien by their status as bona fide purchasers who took their interest in the property without knowledge or notice of the lien.

We conclude the failure to record the lien directly in the chain of title for the property is not dispositive. As explained above, the judgment lien against the settlor attaches to the trust property without regard to whether the judgment itself formally includes the trust. Moreover, while “[t]he act of recording creates a conclusive presumption that a subsequent purchaser has constructive notice of the contents of the previously recorded document,” (*Gates Rubber Co. v. Ulman* (1989) 214 Cal.App.3d 356, 364; Civ. Code, § 1213), constructive notice is not limited to the facts revealed in the recorded chain of title. As explained in *Triple A Management Co. v. Frisone* (1999) 69 Cal.App.4th 520, 531, a party “is not entitled to ignore information that comes to him from outside the recorded chain of title, to the extent such information puts him on notice of information that reasonably brings into question the state of title reflected in the recorded chain of title.” (Italics omitted.)

Second, the fact that neither the Stevenses nor their agents had *actual* knowledge of the judgment lien is likewise not determinative of their status as bona fide purchasers. If the Stevenses had knowledge of facts which would have caused a reasonable person to investigate the possibility that liens may have attached to the

property outside the chain of title, and the Stevenses failed to do so, they will be charged with the knowledge of whatever information such an investigation would have revealed.³ (See *Brock v. First South Savings Assn.* (1992) 8 Cal.App.4th 661, 667 [“[A] ‘good faith’ encumbrancer is one who acts *without knowledge or notice* of competing liens on the subject property.”])

Consequently, the issue in this case is whether, as a matter of law, a person taking title from a revocable trust has some duty to consider and investigate whether recorded judgments remain unsatisfied against the trust settlor. If there is such a duty, the person had constructive notice of any such recorded judgment liens against the settlors, and took title subject to those liens.

Civil Code section 19 provides: “Every person who has actual notice of circumstances sufficient to put a prudent man upon inquiry as to a particular fact, has constructive notice of the fact itself in all cases in which, by prosecuting such inquiry, he might have learned such fact.” Moreover, as noted in *Hochstein v. Romero* (1990) 219 Cal.App.3d 447, 452, “the law conclusively presumes that a party acquiring property has notice of the contents of a properly recorded document affecting such property.”

In this case, because of the game of “hot potato” played by the Sarvers and their trust with respect to the property, the contents of the documents recorded within the property’s chain of title revealed a great deal of information about the Sarvers and their trust. The documents reflected that (1) the trust was “revocable”; (2) the Sarvers were the settlors (at least with respect to this property); (3) the Sarvers were also the trust beneficiaries; and (4) the property had been repeatedly transferred back and forth between the Sarvers and their trust, without consideration.

³ Our reference to the Stevenses includes their title insurance company, which conducted the actual title search on their behalf. Reliance on title insurers for this purpose is common practice, and we will impute the efforts of the title insurer, as well as its knowledge, to the Stevenses. (See *Triple A Management Co. v. Frisone*, *supra*, 69 Cal.App.4th 520, 530.)

Moreover, the Stevenses are presumed to have knowledge of California law. (*Estate of Dye* (2001) 92 Cal.App.4th 966, 973; *Bank One Texas v. Pollack*, *supra* 24 Cal.App.4th at p. 981.) Thus we presume they were aware that the assets contained in a revocable trust, such as the one they were purchasing from, are subject to claims asserted by the creditors of its settlors. We also presume they were aware of Code of Civil Procedure section 697.340, subdivision (a) which states: “(a) A judgment lien on real property attaches to all interests in real property in the county where the lien is created (whether present or future, vested or contingent, legal or equitable) that are subject to enforcement of the money judgment against the judgment debtor pursuant to Article 1 (commencing with Section 695.010) of Chapter 1 at the time the lien was created”⁴

In light of those facts revealed in the deeds pertaining to the property, including specifically the fact that the trust was revocable, as well as the law providing that any judgments or liens existing against either of the Sarvers individually would be fully enforceable against the trust assets, we conclude reasonably prudent people would not have limited their inquiry into the public records to the extent the Stevenses did. In addition to researching the chain of title, a reasonably prudent person would have checked the public records to ascertain not only the existence of judgments or liens against the trust itself (which the Stevenses did do), but also any judgments or liens against the Sarvers individually. There was simply no justification for distinguishing between the revocable trust (as technical grantor) and the Sarvers themselves under these circumstances.

⁴ Code of Civil Procedure section 697.340 goes on to expressly exempt the interests of a “beneficiary under a trust” from the judgment lien, but that exemption is inapposite here. Sarver is not merely a beneficiary of the trust, but also its settlor. It is in that capacity that his interests are subject to the claims of his creditors.

We need not, and do not, decide whether every transferee of property from a trust has an obligation to investigate whether the trust is revocable,⁵ or to ascertain the identities of unknown settlors, and whether any liens or judgments exist against them. We are only concluding that under the circumstances of this case, where the fact of the trust's revocable status was revealed in numerous deeds contained in the public records, and the identity of the settlors was patent, a reasonably prudent person would check the public records for evidence of any extant liens or judgments not only against the trust itself, but also against those settlors. We hold that under these circumstances, a transferee will be charged with constructive knowledge of whatever information would have been revealed by such an inquiry.

Finally, we acknowledge, as the Stevenses point out, that there is no evidence Sarver is judgment proof, or that Harbor Pipe would be left without a remedy if this property cannot be levied upon to satisfy its judgment. But that is not the point. Harbor Pipe's rights to attach this property under Probate Code section 18200 are not dependent upon any showing that Sarver is otherwise impecunious.⁶ Nor is Harbor Pipe required to demonstrate that enforcement of its lien against this particular property is the least disruptive means of satisfying its judgment. Probate Code section 18200 simply provides that all property contained within the Sarvers' revocable trust is subject to recorded liens against them. No separate showing of moral righteousness is required.

The judgment is reversed and the case remanded for further proceedings. Harbor Pipe is to recover its costs on appeal.

⁵ Although we note that Probate Code section 15400 creates a presumption that a trust is revocable: "Unless a trust is expressly made irrevocable by the trust instrument, the trust is revocable by the settlor" (See also former Civ. Code, § 2280.)

⁶ In *Bank One Texas v. Pollack*, *supra*, 24 Cal.App.4th 973, relied upon heavily by Harbor Pipe, the insolvency of the judgment debtor/trust settlor was significant. But in *Bank One*, that person was deceased at the time of the events at issue in the case. Consequently, the parties' rights were governed by Probate Code section 19001, which provides that after the death of a settlor, any property contained in a trust made revocable during his lifetime is subject to the claims of his creditors, but only "to the extent that the deceased settlor's estate is inadequate to satisfy those claims and expenses." That is not the case here.

BEDSWORTH, ACTING P. J.

WE CONCUR:

O'LEARY, J.

MOORE, J.