

Georgiou v. Leslie

This is an important case about post-judgment statutes of limitations, the finality of judgments, and, of equal sanctity, it is a case about greed.

“For their love
Lies in their purses, and whoso empties them
By so much fills their hearts with deadly hate.”

Sir John Bagot, *Richard II*, II, ii, 129

After an 18 year marriage, the parties separated and entered into an MSA pursuant to which Maria received \$4 million (husband claimed he paid her \$5,568,200), representing 10% of the negotiated referral fee husband was to receive regarding federal class action litigation against Enron Corporation. She also received other assets worth approximately \$7 million, including the family home, eight town homes, a Roth IRA and retirement assets, plus debt relief. Subsequent to entry of the final Judgment, Maria felt she was entitled to more of the referral fee. She claimed her divorce attorney forced her into the MSA settlement and that she suffered from mental incapacity, hired a new attorney who filed and then dismissed a purported set-aside motion, then hired yet a 3rd attorney who filed this post-judgment independent action under *Family Code* section 1101 for an alleged breach of husband’s fiduciary duty of full disclosure. The trial court’s denial of her claims was affirmed on appeal.

The opinion’s explanation of the statutory bar to Maria’s post-judgment claims for breach of fiduciary duty are instructive. She did not file a CCP 473 motion to set aside the judgment for “mistake, inadvertence, surprise, or excusable neglect.” Her set-aside motion under *Family Code* section 2122 was barred because not brought within the one year statutory limitation period. Then she turned for support to section 1101, which has a three year limitation period. But this too was rejected, as the appellate court affirmed the trial court’s ruling that section 1101 does not authorize an independent post-judgment action where the subject and amount of the negotiated referral fee was adjudicated in the judgment. Public policy supporting the finality of judgments in section 2120 was an important foundation for the court’s rejection of her attempt to use section 1101 to set aside an adjudicated asset. The opinion is careful to clarify the scope of its ruling, i.e., the court did not decide the propriety of the trial court’s finding that section 1101 *never* authorizes a post-judgment action for breach of fiduciary duty. Here, Maria’s exclusive remedy was under section 2122, but she fell outside its one year limitation period.

After all this travail, perhaps Maria Leslie should have reread her Macbeth: “Things without remedy Should be without regard: what’s done, is done.” [Act 3, scene 2, 8-12]. And she might also have heeded the words of Lady Macbeth: “What’s done cannot be undone.” [Act 5, scene 1, 68].

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