



## Coker v. Escalera

2008 | Cited 0 times | California Court of Appeal | April 28, 2008

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### OPINION

Defendants, Rebecca and Gerald Escalera, individually and as co-trustees of the Escalera Revocable Living Trust, and the Estate of Waldo M. Pike, appeal from a judgment against them, entered after a two phase court trial, in which the court invalidated two deeds to real property, confirmed ownership of the properties in plaintiffs, ordered partition by sale of another piece of real property, and awarded plaintiffs, James Russell Coker, Evangelina Coker, and the Waldo M. Pike McFarland Limited Partnership, a total of \$253,570.22 for unpaid partnership profits. We affirm.

### FACTUAL AND PROCEDURAL BACKGROUND

On December 5, 2000, Waldo Pike executed two agreements, one creating the Waldo M. Pike McFarland Limited Partnership (McFarland LP) and one creating the Waldo M. Pike Bakersfield Limited Partnership (Bakersfield LP). In each partnership agreement, Pike was designated as the general partner, with a 2 percent ownership share, and also as the only limited partner, with a 98 percent ownership share. On December 12, 2000, Pike amended his revocable living trust to provide that, on his death, his interest in McFarland LP was to be distributed to Russell<sup>1</sup> and Evangelina Coker, and his interest in Bakersfield LP was to be distributed to Rebecca and Gerald Escalera. On the same date, he transferred ownership of several parcels of property to McFarland LP. He transferred ownership of several other parcels to Bakersfield LP. On December 20, 2000, Pike transferred a 10 percent limited partner's interest in McFarland LP to Russell Coker, and a 10 percent interest to Evangelina Coker. On the same date, he transferred a 30 percent limited partner's interest in Bakersfield LP to Rebecca Escalera, and a 30 percent interest to Gerald Escalera.

On June 19, 2002, Pike, as general partner of the McFarland LP, executed a grant deed, transferring to Pike and the Escaleras as joint tenants some of the parcels previously transferred to McFarland LP. On September 25, 2002, Pike executed another grant deed, transferring to Pike and the Escaleras as joint tenants several other parcels previously transferred to McFarland LP. Both grant deeds reflected that the transfer was a gift; the Escaleras paid nothing for the properties.



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On December 29, 2002, Pike died at the age of 88. The Cokers subsequently learned that almost all of the real property that had been deeded to McFarland LP had been transferred to Pike and the Escaleras. The Escaleras transferred the real property they received from the McFarland LP to the Escalera Revocable Living Trust.

Plaintiffs sued, asserting causes of action for imposition of a constructive trust and return of property, quiet title, breach of contract, breach of fiduciary duty, accounting, constructive fraud, undue influence, and declaratory relief. On plaintiffs' motion, the court bifurcated the trial and ordered that the issue of Pike's authority to transfer partnership property without his partners' consent and without consideration be tried before other issues. After the first phase of trial, the court issued a statement of decision in which it made extensive factual findings and concluded the June 19, 2002, and September 25, 2002, grant deeds executed by Pike were unauthorized gifts of partnership real property and were void. It concluded the real property described in the deeds continued to be owned by the McFarland LP.

After the first phase of trial and before the second, defendant, Estate of Waldo M. Pike, filed an answer to the first amended complaint, which added defenses that had not been asserted in the Escaleras' answer, including an allegation that the grant deeds to Pike and the Escaleras "effectively amended the Revocable Living Trust of Waldo M. Pike to eliminate the plaintiffs as beneficiaries of the interest held by Waldo M. Pike in the Waldo M. Pike McFarland Limited Partnership, leaving plaintiffs with the assets still owned by the Waldo M. Pike McFarland Limited Partnership at the time of Mr. Pike's death." After the second phase of trial, the court issued a statement of decision rejecting the claim that the deeds constituted amendments of the trust, and confirming its prior decision that the deeds were void and its prior statement of decision. The court entered judgment in accordance with its two statements of decision. Defendants appeal.

## DISCUSSION

### I. Nature of the Transfer of the Real Property

#### A. Standard of Review

"Questions of fact concern the establishment of historical or physical facts; their resolution is reviewed under the substantial-evidence test. Questions of law relate to the selection of a rule; their resolution is reviewed independently. Mixed questions of law and fact concern the application of the rule to the facts and the consequent determination whether the rule is satisfied. If the pertinent inquiry requires application of experience with human affairs, the question is predominantly factual and its determination is reviewed under the substantial-evidence test. If, by contrast, the inquiry requires a critical consideration, in a factual context, of legal principles and their underlying values, the question is predominantly legal and its determination is reviewed independently. [Citation.]" (Crocker National Bank v. City and County of San Francisco (1989) 49 Cal.3d 881, 888.)



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Plaintiffs contend, and the trial court found, that the attempted transfer of the real property was an unauthorized gift. Defendants contend it constituted either a capital distribution to a partner or an amendment of Pike's revocable trust. The nature of the transaction in which the transfer of the real property from McFarland LP to Pike and the Escaleras was effected is a mixed question of law and fact, predominantly factual. Accordingly, this court will apply the substantial-evidence test.

### B. Transfer as an Unauthorized Gift

A limited partnership formed after July 1, 1984, and before January 1, 2008, is governed by the Revised Limited Partnership Act (RLPA) (Corp. Code, § 15611, et seq.). (Corp. Code §§ 15711, 15714, 15912.04, 15912.06, 15912.07.) As to matters not covered in that Act, limited partnerships are governed by the rules applicable to general partnerships,<sup>2</sup> including the Uniform Partnership Act of 1994 (Corp. Code, § 16100, et seq.). (Corp. Code, § 15722.) With some exceptions, the provisions of the RLPA may be varied by the partnership agreement. (Corp. Code, § 15618.)

A limited partnership is "a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners." (Corp. Code, § 15611, subd. (r).) A limited partnership may own real property and engage in the business of buying and selling real property. (Corp. Code, §§ 15616, 16203.) "An interest in a limited partnership is personal property and a partner has no interest in specific partnership property." (Corp. Code, § 15671.) "A partner is not a coowner of partnership property and has no interest in partnership property that can be transferred .." (Corp. Code, § 16501.)

With some exceptions, the general partner of a limited partnership has the same rights and powers, and is subject to the same restrictions, as a partner in a general partnership. (Corp. Code, § 15643, subd. (a).)

"(1) Each [general] partner is an agent of the partnership for the purpose of its business. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership, unless the partner had no authority to act for the partnership in the particular matter and the person with whom the partner was dealing knew or had received a notification that the partner lacked authority.

"(2) An act of a partner that is not apparently for carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership only if the act was authorized by the other partners." (Corp. Code, § 16301.)

The partnership agreement for the McFarland LP describes the business of the partnership as follows: "The business and purpose of the Partnership shall be to engage in any lawful act or activity in which a partnership may engage, including, but without limitation, to engage generally in any and



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all phases of the business of owning, holding, managing, controlling, acquiring, purchasing, disposing of or otherwise dealing in or with any interests or rights in stocks, bonds or any real or personal property, directly or through one or more other partnerships or other entities or arrangements." The list of the initial assets of the partnership, attached to the partnership agreement, included only parcels of real property. Testimony at trial indicated the business of the partnership was owning and renting real property. The partnership's tax returns also indicate rental of real property was its principal business and the source of all of its income.

Pike executed two grant deeds, each of which purported to transfer certain parcels of real property from Waldo M. Pike, as general partner of the McFarland LP, to Waldo M. Pike, Jerry Escalera, and Becky Escalera, all as joint tenants. After the transfers, only one parcel of property was left in the McFarland LP. Russell Coker was not aware of, and did not consent to, the transfers. The documentary transfer tax portion of the deeds reflects the transfers were gifts. The Escaleras paid nothing for the property interests transferred to them. After Pike's death, Rebecca Escalera had a gift tax return prepared, treating the property transfers as gifts from Pike to the Escaleras.

When a partnership is in the business of buying and selling real estate and the property that is sold is part of the stock held for sale, a contract to sell the real property that is executed by less than all of the partners is binding on all of the partners. (*Owens v. Palos Verdes Monaco* (1983) 142 Cal.App.3d 855, 867-869, overruled on other grounds in *Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 510.) The primary business of McFarland LP was not the buying and selling of real property, but the rental of real property. Buying and selling of real property may have been within the scope of the partnership's business and purpose, in that they may have enabled the partnership to maintain its supply of rental properties. Pike did not sell the properties for a fair consideration, however, nor did he exchange them for other rental properties.

There was no evidence the partnership received some other benefit in return. Instead, Pike gave away as gifts all but one of the properties owned by the partnership, substantially depleting the partnership's assets and receiving no consideration or benefit for the partnership in return. There was no evidence that the ordinary course of the partnership business included giving away substantial partnership assets as gifts.

Substantial evidence supports the trial court's finding that Pike's attempted transfer of real property from the McFarland LP to himself and the Escaleras without consideration was not in furtherance of the partnership's purpose. It was not an act "apparently for carrying on in the ordinary course the partnership business." The transfer was not authorized by the other partners, who were not aware of the transfer when it was made. Accordingly, under Corporations Code section 16301, subdivision (2), the transfer was not binding on the partnership.

Defendants contend the transfer of properties from the McFarland LP to Pike and the Escaleras was authorized by the Waldo M. Pike McFarland Limited Partnership Agreement (partnership



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agreement). They argue that disposing of real property was within the business and purpose of the partnership, as set out in section 1.3 of the partnership agreement. They also cite provisions placing the business of the partnership agreement "under the exclusive control of the General Partner" (partnership agreement, § 4.1), and granting the general partner "the authority to exercise the powers reasonably necessary in order to pursue the partnership's purposes," including:

"A. To obtain, sell, convey, mortgage, encumber, lease, exchange, pledge, partition, plat, subdivide, improve, repair, surrender, abandon or otherwise deal with or dispose of any and all real property of whatsoever character and wheresoever situated at such time or times and in such manner and upon such terms as the General Partner deems expedient and proper. To give options therefore, to execute deeds, transfers, leases, pledges, mortgages, and other instruments of any kind. [¶] . [¶]

"D. To sell, transfer, assign, convey, lease, exchange, or otherwise dispose of any or all of the assets of the Partnership upon such terms and conditions as the General Partner deems advisable, including a deferred payment sale or an exchange for other assets of any kind." (Partnership agreement, § 4.4A, D.)

In the context of an agency created by a power of attorney, a similar grant of power has been held not to confer on the agent the power to make a gift of real property. "'A power of attorney conferring authority to sell, exchange, transfer or convey real property for the benefit of the principal does not authorize a conveyance as a gift or without substantial consideration [citations]; and a conveyance without the scope of the power conferred is void.' [Citation.]" (Estate of Stephens (2002) 28 Cal.4th 665, 672.) Likewise, the language in the partnership agreement granting the general partner, as the agent of the partnership, authority to "sell, convey, . or otherwise deal with or dispose of any and all real property" of the partnership "in order to pursue the partnership's purposes" did not authorize the general partner to make a gift of partnership real property to himself and third persons.

Additionally, while these provisions of the partnership agreement confer broad powers on the general partner, they must be read in conjunction with the limitations on those powers, both in the partnership agreement and under partnership law. Section 4.4 of the partnership agreement limits the powers granted to those "reasonably necessary in order to pursue the partnership's purposes." Section 4.5D of the partnership agreement provides: "No Partner, without the consent of all the other Partners, shall" "[p]ossess Partnership property, or assign his or her interest or rights in specific Partnership property for other than a Partnership purpose." These provisions preclude a general partner's transfer of partnership property for other than a partnership purpose.

A partner owes fiduciary duties of loyalty and care to the partnership and the other partners. (Corp. Code, § 16404, subd. (a).) The duty of loyalty includes duties:

"(1) To account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the



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partner of partnership property or information, including the appropriation of a partnership opportunity.

"(2) To refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership.

"(3) To refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership." (Corp. Code, § 16404, subd. (b).)

The duty of care "is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law." (Corp. Code, § 16404, subd. (c).) These duties must be discharged "consistently with the obligation of good faith and fair dealing." (Corp. Code, § 16404, subd. (d).)

Corporations Code section 16404, subdivision (b), does not set out the exclusive duties included in the duty of loyalty. Section 404 of the 1997 Uniform Partnership Act, on which section 16404 is based, "contain[ed] an explicitly exclusive enumeration of a partner's duties," providing that the duties of loyalty and care were "'limited to'" those enumerated. (*Enea v. Superior Court* (2005) 132 Cal.App.4th 1559, 1564-1565.) "While section 16404 retains this language with respect to the duty of care, it repudiates it with respect to the duty of loyalty, stating instead that '[a] partner's duty of loyalty to the partnership and the other partners includes all of the following:.'" (Id. at p. 1565.) Section 16404 leaves "the articulation of the duty of loyalty to traditional common law processes." (*Enea v. Superior Court*, supra, at p. 1565.)

Traditionally, "[p]artnership is a fiduciary relationship, and partners are held to the standards and duties of a trustee in their dealings with each other. "'Partners are trustees for each other, and in all proceedings connected with the conduct of the partnership every partner is bound to act in the highest good faith to his copartner and may not obtain any advantage over him in the partnership affairs by the slightest misrepresentation, concealment, threat or adverse pressure of any kind.'" [Citations.]'" (BT-I v. Equitable Life Assurance Society (1999) 75 Cal.App.4th 1406, 1410-1411.) "'Partnership is a fiduciary relationship, and partners may not take advantages for themselves at the expense of the partnership.'" [Citations.]" (*Enea v. Superior Court*, supra, 132 Cal.App.4th at p. 1564.)

Even language in the partnership agreement conferring "'sole discretion'" on the general partner "'does not metamorphose the document into an unrestricted license to engage in self-dealing at the expense of those to whom the managing partner owes such a duty.'" [Citation.]" (BT-I v. Equitable Life Assurance Society, supra, 75 Cal.App.4th at p. 1413.) "[A] limited partnership agreement cannot relieve the general partner of its fiduciary duties in matters fundamentally related to the partnership business." (Id. at p. 1412.) Additionally, "[a] partner's fiduciary duty extends to the dissolution and liquidation of partnership affairs .. [Citation.]" "A partner may not dissolve a partnership to gain the benefits of the business for himself, unless he fully compensates his copartner for his share of the





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prospective business opportunity.'" [Citation.]" (Everest Investors 8 v. McNeil Partners (2003) 114 Cal.App.4th 411, 424-425.)

Defendants have not identified any partnership purpose served by the transfer of real property from the partnership to Pike and the Escaleras. In fact, Rebecca Escalera testified that, when she took Pike to see Marie Gonzalez, the escrow officer and notary who prepared and notarized the grant deeds, Pike told Gonzalez he wanted the Cokers removed from the McFarland LP. Apparently, the intended purpose of the transaction was to terminate the Cokers' interests as limited partners and permit Pike and the Escaleras to own, manage, and profit from the partnership's real property without compensation to the Cokers. Substantial evidence supports the trial court's findings that Pike's attempted transfer of partnership real property to himself and the Escaleras without consideration violated the terms of the partnership agreement, including section 4.5D, and breached Pike's fiduciary duty of loyalty to the Cokers.

Defendants argue that Pike intended to retain "absolute control" over the real property, even after he conveyed the property to the McFarland LP, and the court should give effect to that intent. Even if such an intent were shown, if a general partner's fiduciary obligations may not be expressly contracted away in the partnership agreement, as the BT-I case held, they likewise cannot be nullified by the intent of the general partner to conduct himself as if they did not exist.

### C. Transfer as a Capital Distribution

Defendants contend the property transfer was not a gift, but a capital distribution or return of capital authorized by the partnership agreement and partnership law. The RLPA defines a "[d]istribution" as "the transfer of money or property by a partnership to its partners without consideration." (Corp. Code, § 15611, subd. (j).) "Return of capital" is defined as "any distribution to a partner to the extent that the partner's capital account, immediately after the distribution, is less than the amount of that partner's contributions to the partnership as reduced by prior distributions which were a return of capital." (Corp. Code, § 15611, subd. (ab).)

By definition, a capital distribution or return of capital involves a transfer of money or property to a partner. The Escaleras were not partners in the McFarland LP, and therefore the transfer to them could not constitute a capital distribution or return of capital.

"Distributions of the money or property of a limited partnership shall be made to the partners in the manner provided in the partnership agreement. If the partnership agreement does not otherwise provide, distributions which are a return of capital shall be made in proportion to the contributions of each partner and distributions which are not a return of capital shall be made in proportion to the allocation of profits." (Corp. Code, § 15654.) A partner may receive distributions before he withdraws from the limited partnership and before it is dissolved, "to the extent and at the times or upon the happening of the events specified in the partnership agreement." (Corp. Code, § 15661.)



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"A general partner of a limited partnership may . share in the profits and losses of, and in distributions from, the limited partnership as a general partner. A general partner also may . share in the profits and losses and distributions, as a limited partner, if the general partner's interest as a limited partner is separately designated in the partnership agreement." (Corp. Code, § 15644, italics added.) Thus, the limited partnership agreement determines when and how a distribution may be made, and, unless the agreement provides otherwise, each partner shares in the distribution in proportion to its contribution to the partnership capital or its entitlement to a share of the profits.

Defendants have not identified any provision in the McFarland LP partnership agreement they contend authorized a capital distribution or return of capital to Pike under the circumstances in existence at the time of the property transfer. Section 2.3 of the partnership agreement provides: "Each Partner irrevocably waives any statutory, equitable or other rights he or she may have to withdraw or demand the return of his or her capital contribution except as provided herein." The only other section addressing return of capital appears to be partnership agreement section 8.4, which provides for distribution of assets in the event of dissolution. Defendants do not contend the transfer of real property was part of the dissolution and winding up of the partnership. Additionally, there was no evidence Pike intended the transfer to be a capital distribution, and no distribution of property was made to the Cokers in proportion to their interest in the partnership or their entitlement to profits of the partnership. Consequently, substantial evidence supports the trial court's conclusion that the transfer of the real property to Pike and the Escaleras was not a capital distribution or return of capital.

### D. Transfer as an Amendment of Pike's Revocable Trust

At the second phase of the trial, defendants contended the grant deeds transferring the property were actually amendments of the Waldo M. Pike Revocable Living Trust. During his lifetime, Pike was settlor, trustee, and beneficiary of the trust. Pursuant to an amendment of December 12, 2000, on Pike's death, the trustee was to distribute to the Escaleras the trust's interest in the Bakersfield LP and to the Cokers the trust's interest in the McFarland LP.<sup>3</sup>

The settlor may revoke a revocable trust in whole or in part by the method set out in the trust instrument. (Prob. Code, § 15401, subd. (a).) The settlor may also modify a revocable trust by the procedure for revocation. (Prob. Code, § 15402.) The Pike trust was revocable; the trust instrument provided that, during Pike's lifetime, the trust could be revoked or amended "by written notice delivered by the Settlor during his lifetime to the Trustee." Defendants contend that the two grant deeds were written notices, effectively delivered by Pike to himself during his lifetime, which therefore constituted amendments of the revocable trust. They cite *Gardenhire v. Superior Court* (2005) 127 Cal.App.4th 882, 888.

In *Gardenhire*, decedent created a trust in which she was settlor, trustee, and income beneficiary during her lifetime; on her death, the trust assets were to be distributed to a named hospital, in trust





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for three individuals. Decedent quitclaimed certain real property to the trust. She also executed a pour-over will, leaving her estate to the trust. Subsequently, decedent revoked the first will and executed a new one. She did not mention the trust, but stated "it was her intent 'to dispose of all real and personal property which I have the right to dispose of by Will.'" (Gardenhire v. Superior Court, supra, 127 Cal.App.4th at p. 886.) In the second will, she left her personal property to one individual, the residue of her estate to a testamentary trust for the benefit of a second individual, and on the death of both individuals, the testamentary trust estate would vest in St. Anne's Maternity Home.

After decedent's death, one of the beneficiaries under the second will sought a determination that decedent had revoked the trust by will before she died, and an order transferring legal title to the property from the trust to decedent's estate. Gardenhire, as trustee of the trust, filed a motion for summary judgment, seeking a determination that decedent could not have revoked the trust by will. The trial court denied the motion, and Gardenhire petitioned for a writ of mandate.

The appellate court denied the petition. It considered whether the revocation provision in the trust instrument authorized revocation by will. (Gardenhire v. Superior Court, supra, 127 Cal.App.4th at pp. 886-887.) The trust instrument provided: "'While living, the Trustor may at any time and from time to time by written notice signed by the Trustor and delivered to the Trustee: [¶] A. Revoke or change the interest in any trust . of any beneficiary .. [¶] B. Amend any provision of this Declaration .. [¶] C. Revoke in whole or in part any trust or trusts created by or to be created pursuant to this Declaration. [¶] D. Withdraw all or any part of the Trust Estate.'" (Id. at p. 886.) The court concluded "that because [decedent] did not limit or qualify the term 'written notice,' she authorized revocation via any writing that unambiguously manifested her intent to revoke, including a will." (Id. at p. 888.)

"'In construing trust instruments, as in the construction and interpretation of all documents, the duty of the court is to first ascertain and then, if possible, give effect to the intent of the maker.' [Citations.]" (Gardenhire v. Superior Court, supra, 127 Cal.App.4th at p. 888.) "'Extrinsic evidence is 'admissible to interpret the instrument, but not to give it a meaning to which it is not reasonably susceptible' [citations], and it is the instrument itself that must be given effect. [Citations.]" (Ibid.)

Substantial evidence supports the trial court's finding that the grant deeds executed by Pike did not unambiguously manifest an intent to revoke or amend the trust. Pike had amended the trust, with the assistance of his attorney, in December 2000. That amendment expressly stated it was an amendment of the trust, identified the specific paragraphs being amended, and set out the new language to be substituted for the original language. It was signed by Pike as both settlor and trustee, and the signatures were notarized. Thus, Pike knew how to amend the trust instrument if he desired to do so. He took no steps to amend the trust in that manner in 2002.

In Gardenhire, decedent's second will expressly stated that she intended "'to dispose of all real and personal property which I have the right to dispose of by Will.'" (Gardenhire v. Superior Court, supra, 127 Cal.App.4th at p. 886.) That intent was inconsistent with disposition of her property



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through the trust. The court interpreted the statement in the second will as the expression of an intent to revoke the trust and dispose of her property by will.

The Pike trust was revocable by written notice to the trustee. The grant deeds, which defendants contend constituted such a notice, do not mention the Pike trust. They contain no statement of Pike's intent in executing them. They were not signed by Pike as settlor or trustee of the Pike trust. They do not purport to affect the ownership or disposition of trust assets. The assets of the trust included Pike's partnership interests in the Bakersfield LP and the McFarland LP. The grant deeds conveyed real property, which belonged to the McFarland LP, not to the trust. The grant deeds did not purport to transfer Pike's interest in McFarland LP or to change the distribution of trust property to be made upon Pike's death.

Witnesses testified that Pike orally stated, at the time he executed the grant deeds, that he wanted to remove the Cokers from the partnership. There was no evidence that he mentioned the trust, or expressed any intent to revoke or amend the trust, at that time.

The grant deeds do not express any intent inconsistent with the continued existence of the trust in its then existing form. Removal of assets from the partnership was not inconsistent with the continued existence of the trust; the trust continued to hold Pike's partnership interest in McFarland LP as an asset and to provide for its distribution on his death. The December 12, 2000, amendment to the trust instrument provided that, on Pike's death, the Cokers were to receive "the Trust's interest, if any, in The Waldo M. Pike McFarland Limited Partnership." (*Italics added.*) Thus, the trust instrument already contemplated the possibility that Pike's partnership interest might change or cease prior to Pike's death. Consequently, there was no inconsistency between the transfer of the partnership's real property and the continued existence of the trust from which the court could infer an intent by Pike to revoke or amend the trust. As the trial court found, the grant deeds, unlike the will in *Gardenhire*, did not unambiguously manifest an intent to revoke or amend the trust. Substantial evidence supports the trial court's conclusion that the grant deeds did not constitute a revocation or amendment of Pike's revocable trust.

## II. Remedy

Defendants contend invalidation of the grant deeds was not an available remedy in this case, and plaintiffs should be limited to recovery of money damages. They assert that a deed may be invalidated only on a finding of undue influence, mistake, fraud, forgery, or lack of capacity, citing general discussions in treatises. Because there was no evidence or finding of undue influence, mistake, fraud, forgery, or lack of capacity, they conclude, the grant deeds should not have been invalidated.

Defendants' discussion of invalidation of the grant deeds contains no discussion of remedies under partnership law. The Uniform Partnership Act provides:



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"(a) Partnership property may be transferred as follows:

"(1) Subject to the effect of a statement of partnership authority under Section 16303, partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name. [¶] . [¶]

"(b) A partnership may recover partnership property from a transferee only if it proves that execution of the instrument of initial transfer did not bind the partnership under Section 16301 and either of the following applies:

"(1) As to a subsequent transferee who gave value for property transferred under paragraph (1) or (2) of subdivision (a), proves that the subsequent transferee knew or had received a notification that the person who executed the instrument of initial transfer lacked authority to bind the partnership.

"(2) As to a transferee who gave value for property transferred under paragraph (3) of subdivision (a), proves that the transferee knew or had received a notification that the property was partnership property and that the person who executed the instrument of initial transfer lacked authority to bind the partnership." (Corp. Code, § 16302, subds. (a), (b), italics added.)

Pike attempted to transfer property of the McFarland LP by executing grant deeds as its general partner. As discussed previously, execution of those grant deeds did not bind the partnership under Corporations Code section 16301, because the gifts were unauthorized and not in the course of the business of the partnership. Subdivision (b) of Corporations Code section 16302 is designed to protect a transferee or subsequent transferee who is a bona fide purchaser for value without notice that the transfer was unauthorized. Defendants were not bona fide purchasers for value; the property transfers were gifts, for which defendants did not give value. The trial court found that the Escaleras had a copy of the McFarland LP agreement and knew its terms (which were virtually identical to the terms of the agreement for the Bakersfield LP, in which the Escaleras were limited partners), and that the Escaleras knew the Cokers were partners in the McFarland LP and were unaware of the grant deeds. These findings were supported by substantial evidence and are not challenged by defendants.

Pursuant to Corporations Code section 16302, subdivision (b), the partnership was entitled to recover the partnership property that was improperly transferred by Pike. The trial court effected the return of the property by invalidating the grant deeds and confirming that the McFarland LP continued to own the subject properties. There was no error.

### DISPOSITION

The judgment is affirmed. Plaintiffs are awarded their costs on appeal.



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WE CONCUR: WISEMAN, Acting P.J., CORNELL, J.

1. Consistent with the testimony at trial, James Russell Coker is referred to herein as Russell Coker.
2. "General partnership" as used herein means a partnership that has no limited partners.
3. Schedule A to the trust instrument, containing a listing of property of the trust, is not part of trust instrument in the record. The parties do not dispute that Pike's interests in the Bakersfield LP and the McFarland LP were assets of the trust.

