

In Re: THEODORE A. KOLB, Debtor. ROBERT M. CASSEL, on behalf of this Chapter 11 Estate, Plaintiff-Appellant, v. HILDE KOLB, Trustee; JONATHAN KOLB; RICHARD KOLB; DOUGLAS KOLB, Defendants-Appellees.

No. 01-17240

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

2003 U.S. App. LEXIS 7251; 2003 Cal. Daily Op. Service 3210

April 17, 2003, Filed

PRIOR HISTORY:

Cassel v. Kolb (In re Kolb), 321 F.3d 868, 2003 U.S. App. LEXIS 3770 (9th Cir. Cal., 2003)

DISPOSITION:

Opinion filed on March 3, 2003 amended. Petition for Panel Rehearing and for Rehearing En Banc denied.

COUNSEL:

For In re: THEODORE A. KOLB, Debtor: Neil R. Bardack, Esq., McQUIAD, BEDFORD & VAN ZANDT, LLP, San Francisco, CA.

For ROBERT M. CASSEL, on behalf of this Chapter 11 Estate, Plaintiff - Appellant: Matthew J. Shier, Esq., PINNACLE LAW GROUP, San Francisco, CA. John Poppin, LAW OFFICES OF JOHN POPPIN, San Francisco, CA.

For HILDE KOLB, Jonathan Kolb, Richard Kolb, Douglas Kolb, Trustee, Defendants - Appellees: Neil R. Bardack, Esq., McQUAID, BEDFORD & VAN ZANDT, LLP, San Francisco, CA.

JUDGES:

[*1] Before: Robert E. Cowen, * Michael Daly Hawkins and William A. Fletcher, Circuit Judges.

* The Honorable Robert E. Cowen, Senior United States Circuit Judge for the U.S. Court of Appeals for the Third Circuit, sitting by designation.

OPINION:

ORDER

ORDER

The Opinion filed on March 3, 2003, and appearing at *321 F.3d 868 (9th Cir. 2003)*, is amended as follows:

Slip Opinion page 2940, line 9: substitute "transfer" for "conveyance" so the sentence reads "Alternatively, Cassel argued that the disclaimer was a fraudulent transfer under the Bankruptcy Code."

Slip Opinion page 2941, lines 18-21: delete "The Bankruptcy Court's factual findings are reviewed for clear error. *In re Estate of MarkAir, Inc., 308 F.3d 1038, 1040 (9th Cir. 2002)*."

Slip Opinion page 2943, line 26: insert footnote call "3" following "For the reasons below, we conclude that it was." At footnote "3" insert: "Because we conclude that Theodore Kolb accepted the benefits of his contingent interest and thus could not disclaim it, we need not reach Cassel's alternative argument that the disclaimer constituted a fraudulent transfer."

Slip Opinion page 2948, line 33: insert [*2] "Each action is sufficiently clear, and does not raise any genuine issues of material fact." following the sentence that reads "In the present matter, Cassel identifies two actions taken by Theodore Kolb with respect to the assets of the Kolb Trust."

Slip Opinion page 2951, line 30: insert footnote call "12" following "The Bankruptcy Court shall proceed in a manner consistent with this opinion." At footnote "12" insert: "We also deny without prejudice to renewal after remand to the Bankruptcy Court the appellant's motion for substitution contained in the suggestion of death filed under *Federal Rule of Appellate Procedure 43(a)*."

Substitute "*Uniform Disclaimer of Transfers Act*" for "*Uniform Transfers Act*" at the following: slip Opinion page 2946, lines 14, 16, 18; slip Opinion page 2946, footnote 6, lines 1 and 6; slip Opinion page 2947, footnote 7, line 5; and slip Opinion page 2948, lines 21-22.

With the filing of these amendments,

Appellant's Motion re Suggestion of Death and Response Thereto is DENIED AS MOOT, as the Motion has been addressed in the amendments to the Opinion.

Appellees' Motion for Permission to File Appendix to Petition for Panel Rehearing and for Rehearing [*3] En Banc is GRANTED.

The panel has voted to deny Appellees' petition for panel rehearing. Judge Cowen has recommended denying the petition for rehearing en banc and Judges Hawkins and Fletcher have voted to deny the en banc petition.

The full court has been advised of the petition for rehearing en banc and no active Judge has requested a vote on whether to rehear the matter en banc. *Fed. R. App. P. 35*.

The Petition for Panel Rehearing and for Rehearing En Banc is DENIED.