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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

DEBRA D. HUTCHINGS, as Trustee, etc., Plaintiff and Respondent, v. DANIEL D. DROMMERHAUSEN III, Defendant and Appellant.	B191211 (Los Angeles County Super. Ct. Nos. BP083462, BP083463, BP086023)

APPEAL from an order of the Superior Court of Los Angeles County, Aviva K. Bobb, Judge and Eli A. Chernow, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.). Affirmed.

Bartsch & Webb, Duane L. Bartsch and Eric L. Webb for Defendant and Appellant.

Loeb & Loeb, Adam F. Streisand, and Nicholas J. Van Brunt, for Plaintiff and Respondent.

I. INTRODUCTION

In this consolidated appeal, Daniel G. Drommerhausen III, (Daniel) [1] challenges 3 separate orders of the probate court declaring that 38 real properties and 11 bank and brokerage accounts belong to: the Estate of Daniel G. Drommerhausen II; the Estate of Marjorie M. Drommerhausen; or the Drommerhausen Family Trust ("the trust). Daniel G. Drommerhausen and Marjorie Drommerhausen were the parents of Daniel and Debra Hutchings. Ms. Hutchings, who is the executor of the parents' wills and the sole successor trustee of the trust, filed three Probate Code[2] section 850 petitions to confirm that the real properties and accounts belong either to the estates or the trust. The probate court entered the three orders following a stipulated trial by reference before Retired Superior Court Judge Eli Chernow. We affirm.

II. BACKGROUND

A. The Petitions

Mr. Drommerhausen and his wife, Ms. Drommerhausen, spent over 40 years acquiring real estate. Mr. Drommerhausen apparently used various methods to acquire the property including making purchases through various names, fictitious identities, and businesses. The record disclosed that, on occasions, property was acquired or deeds were recorded in the names of Ms. Hutchings or Daniel without their knowledge. Ms. Drommerhausen acted as a bookkeeper and a rental sales agent. The parties agreed that Ms. Hutchings took virtually no role in the family business. However, Daniel was

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1 Daniel G. Drommerhausen III will be referred to as Daniel for purposes of clarity only and not out of disrespect.

2 All further statutory references are to the Probate Code unless otherwise indicated.

involved in the family real estate business for at least 25 years. Although the level of his participation in the real estate business was disputed, Daniel received a salary of approximately $4,000 a month for his services.

Mr. Drommerhausen and Ms. Drommerhausen created the trust in December 1995. Schedule A of the trust identified certain real properties that were conveyed to the instrument at the time it was established. Ms. Hutchings and Daniel were named as successor co-trustees and are equal beneficiaries under the trust. Article I(A) of the trust provides: "This Trust was created to hold the Settlors' combined estate and provide continuity of management of the estate, both during the Settlors' lifetimes and upon the Settlors' deaths to avoid probate of the estate. During the lives of the Settlors, all Trust benefits shall accrue to the Settlors. At the death of a Settlor, any property remaining outside of the Trust may pass to the Trust estate through provisions of the deceased Settlor's Last Will and Testament (Pour-Over Will). After the death of both Settlors, all Trust benefits shall pass to their beneficiaries as provided herein."

Also on December 20, 1995, Mr. Drommerhausen and Ms. Drommerhausen executed wills which contained identical provisions stating that the assets of each estate would pour over to the trust. The pour-over provisions provide that upon decedent's death: "I GIVE the entire residue of my estate to the Trustee then in office under that trust as named above. I direct that the residue of my estate shall be added to, administered and distributed as part of the Trust . . . ."

Mr. Drommerhausen died on January 19, 2003. Ms. Drommerhausen died on August 10, 2003. On April 28, 2004, Ms. Hutchings was appointed sole executor of the wills of Mr. Drommerhausen and Ms. Drommerhausen. On June 3, 2004, the probate court granted an ex parte application suspending Daniel's powers and enjoining him from taking further actions with respect to the trust property. Ms. Hutchings was appointed sole interim trustee of the trust.

On December 1, 2004, Ms. Hutchings, in her capacity of executor and trustee, filed three section 850 petitions to determine right title and ownership of property: In the

Matter of the Drommerhausen Family Trust, u/d/t dated December 20, 1995, case No. BP086023; In the Matter of the Estate of Daniel G. Drommerhausen II, deceased, case No. BP083463; and In the Matter of the Estate of Marjorie Moraw Drommerhausen, deceased, case No. BP083462. The petitions alleged that disputes had arisen between Ms. Hutchings and Daniel concerning the ownership of certain real properties and bank and brokerage accounts. The petitions alleged that when there is real or personal property held in the name of "Daniel G. Drommerhausen" without a Roman numeral II or III, Daniel contended that he owned the property despite evidence to the contrary. The petitions further alleged that title to certain properties were held in Daniel's name but were actually owned by either Mr. Drommerhausen "and/or" Ms. Drommerhausen and, therefore, belonged to their estates.

On January 20, 2005, Ms. Hutchings was appointed sole successor trustee pursuant to the parties' stipulation. The parties also stipulated that the matter would be submitted to Retired Judge Chernow for trial by reference pursuant to Code of Civil Procedure section 638. The probate court entered judgment following the referee's recommendations as to the ownership of the disputed properties.

As previously noted, trial of the three separate petitions took place before Retired Judge Chernow over a nine-day period. At the trial, Ms. Hutchings's theory was that Mr. Drommerhausen had executed numerous real estate sham transactions over the years. This included transferring title by grant and trust deeds and foreclosure sales while maintaining control and beneficial ownership of the properties. The theory was that Mr. Drommerhausen did this in order to avoid paying taxes and to mislead creditors. Daniel contended: he is the owner of properties expressly titled Daniel G. Drommerhausen III; he is the owner of properties titled "Daniel G. Drommerhausen" with no Roman numeral; and he owns some real properties based on the parents' promises to convey the properties to him upon their deaths for his decades of service to the family real estate business in reliance on the promises. Daniel further claimed he is the owner of 11 bank accounts by right of survivorship as a joint owner of the accounts.

B. The Trial

1. Overview

Several witnesses testified and numerous documents were entered into evidence. Because of the nature and number of the claims in this case, evidence related to the specific claims raised by the parties is set forth in the discussion portion of this opinion. But we shall set forth the main characters' testimonies at this point for purposes of clarity.

2. Daniel's Testimony

Ms. Hutchings called Daniel to testify under Evidence Code section 776. Daniel testified that he worked for his parents' real estate business for about 25 years. He was paid about $4,000 a month with occasional bonuses. At times, his parents would tell him to keep the rents that he had collected. His parents paid for his health insurance about the mid-1990's after Daniel was divorced.

Daniel testified that Mr. Drommerhausen considered Ms. Hutchings's husband, David Hutchings, to be a "baboon" waiting to get control of the parents' properties after they died. Ms. Drommerhausen was obsessed with making sure that Mr. Hutchings never got any of the estate property. The parents, however, wanted the property to be divided equally. Daniel also testified that it was his intention at the time of his parents' deaths to claim properties outside the trust in order to share with Ms. Hutchings. According to Daniel, their father intended that the properties be held as a total unit for the benefit of everyone. However, things changed when Daniel and Ms. Hutchings became involved in litigation. The litigation was precipitated in part because Ms. Hutchings wanted to claim properties for the estates and to pay taxes. Daniel testified at his deposition that his parents did not file any income tax returns for about 10 years. Daniel

wanted Ms. Hutchings to help with the family business. However, he never heard his parents ask her to give up a successful career to move to Los Angeles from Northern California.

Daniel prepared his 1996 marital settlement agreement on instructions from his ex-wife's attorney and under duress. Daniel did not include properties he was now claiming in his 1996 marital settlement agreement. Daniel's explanation was that the marital settlement agreement was signed by him under duress. Also, the marital settlement agreement was prepared by the attorney for Daniel's former spouse. But at Daniel's deposition, no mention was made of the ex-wife's attorney's advice to omit the 50 properties from the marital settlement agreement. Daniel did not remember that at his deposition he had not mentioned that his ex-wife's attorney advised him not to include the information about the 50 properties he was claiming. Daniel also testified that he signed the 1996 marital settlement agreement in haste. In the 1996 marital settlement agreement, he listed: the VIN numbers for his motorcycles; promissory notes of which he was the beneficiary; bonds by their numbers; and all his firearms with their serial numbers. However, he did not identify or list any of the disputed properties.

After Mr. Drommerhausen died in 2003, Daniel discovered a note dated November 15, 1992. On November 15, 1992, Mr. Drommerhausen wrote a note to Daniel explaining how to avoid paying estate taxes on the real properties by claiming properties held without a Roman numeral III. The handwritten note which was introduced at trial as exhibit 9-3 provides in part: "Dan, on properties vested in Daniel G. Drommerhausen you can sign a deed as follows. Daniel G. Drommerhausen III, a married man who acquired title as Daniel G. Drommerhausen. Ann may be asked to sign a Quitclaim Deed releasing her community property interest if so acquired by title [company]. It may also work for properties held as Daniel G. Drommerhausen, a married man. Try it. Thanks Dad." This note was prepared three years before the December 20, 1995 trust was formed.

3. ADCO Investment Co.

ADCO Investment Co. (ADCO) was a fictitious business name for Daniel and Mr. Drommerhausen. Mr. Drommerhausen used the name in the 1970s and 1980s. In 1998, Mr. Drommerhausen renewed the business name. Mr. Drommerhausen agreed to allow Daniel to have all of ADCO's assets and liabilities. Daniel testified that he was "active" or "involved" with ADCO prior to 1998. Daniel admitted that there were checks on a Bank of America account in the name ADCO between 1998 and August 1999 which contained the signature of Mr. Drommerhausen. Also, there were checks in the account Ms. Drommerhausen had signed using her husband's name. Further, there were checks signed by Ms. Drommenhausen in Daniel's name. Daniel claimed ownership of two properties based on ADCO's title to property located at 1122 Westmont and 8135 Christian Avenue, San Pedro. Daniel sold the 8135 Christian Avenue property for $250,000 after his parents died and kept the proceeds.

4. Ms. Hutchings's Testimony

Ms. Hutchings testified that her parents supported her move to Northern California. When she decided to join the family business between jobs, Mr. Drommerhausen told her that she should live her own life. After her son was born, Ms. Hutchings asked Mr. Drommerhausen if he was disappointed that she had not returned to Los Angeles to work in the family business affairs. Mr. Drommerhausen admitted he was disappointed Ms. Hutchings did not participate more actively in the family business affairs. But then in reference to Ms. Hutchings son, Douglas, Mr. Drommerhausen said, '"Well, yeah, but then there wouldn't have been Douglas.'"

According to Ms. Hutchings, Daniel would complain that she made more money than him working as a sales representative for Apple Computer. Mr. Drommerhausen

would then explain Daniel was making money as a property manager and not paying taxes on that income. Ms. Hutchings' parents never told Daniel that they would give him the lion's share of their estates. They never told him that he would get more than Ms. Hutchings from the estates. Ms. Hutchings testified that her parents treated them equally in: stock purchases; college educations; honeymoons; annual $10,000 Christmas checks; and home purchases.

Ms. Drommerhausen did not like Ms. Hutchings's husband. There was an incident over the $10,000 Christmas check one year where Ms. Hutchings handed the check to Mr. Hutchings. However, Ms. Drommerhausen never said that Ms. Hutchings would receive less from the estates because of the marriage to Mr. Hutchings. Ms. Hutchings testified that Mr. Drommerhausen and Mr. Hutchings got along very well.

In the mid-1990's, Mr. and Ms. Drommerhausen and Daniel and Ms. Hutchings had a conversation about the estate at the family home. Mr. Drommerhausen told them that everything would be equally divided and Daniel and Ms. Hutchings would be co-executors. Mr. and Ms. Drommerhausen did not distinguish between what was in or outside of the trust. Mr. and Ms. Drommerhausen did not say the lion's share of the estate would go to Daniel. Ms. Hutchings subsequently asked Mr. Drommerhausen what she would do with all the property. Mr. Drommerhausen responded, "'Well, half of it is yours and you can do with it what you want.'" Ms. Hutchings never heard her parents say that they wanted to give Daniel more to compensate him as a reward for his work in the real estate business. Although Daniel was present during conversations where their parents indicated that the estates would be shared equally, he never objected. Daniel never said that their parents had promised him more than Ms. Hutchings. Ms. Hutchings signed a resignation of trustee document because Daniel told her it would facilitate the sale of the Napa Street and Hillsdale properties. Daniel did not tell her that he would keep the proceeds from the sales.

In November 1993, Ms. Hutchings tried to obtain information for the estate taxes. Daniel had a three-ring binder but would only orally give her information, which she had

to write down. Shortly thereafter, Daniel sent her a copy of the handwritten November 15, 1992 note from Mr. Drommerhausen. Ms. Hutchings admitted on cross-examination that Daniel often asked her to come to Los Angeles to help him run the business. But Ms. Hutchings admitted she did not help Daniel.

After their parents died, Daniel told Ms. Hutchings that he was closing some accounts for consolidation and to clean up what he characterized as Mr. Drommerhausen's mess. The two talked about what a mess the business was and how it needed to be cleaned up. Daniel did not tell her that the accounts belonged to him. Daniel blamed the "mess" on Mr. Drommerhausen's mismanagement. Daniel never told Ms. Hutchings that his parents promised he would get all the property outside of the trust. Ms. Hutchings acknowledged Ms. Drommerhausen's feelings about Mr. Hutchings. But, according to Ms. Hutchings, her parents always treated their children equally.

5. Third Party Testimony

a. Ann Brooks

Ann Brooks testified that she was married to Daniel from April 1, 1988 to September 6, 1996. She and Daniel filed joint tax returns. Daniel never reported income he received from his parents on the joint tax return. She had an attorney representing her during the divorce but Daniel did not. She confirmed that she wanted the divorce to go quickly because she wanted to remarry. She remarried two days after the divorce was final.

b. Theodore Byrne

Theodore Byrne testified that he is an attorney, a certified public accountant, and a licensed real estate broker. Mr. Byrne represented Mr. Drommerhausen. According to

Mr. Byrne, he once did an Internet search. Mr. Byrne discovered two pages of documents containing the name Daniel G. Drommerhausen as owner of real property. Some of the names were held in trust and others were just under the name Daniel G. Drommerhausen. Mr. Byrne subsequently asked Mr. Drommerhausen to explain why the some properties were held in trust and others were not. Mr. Drommerhausen, in front of Ms. Drommerhausen, explained that he had placed some properties in a trust and those were for his children. The other ones were for Daniel. Mr. Byrne testified that Mr. Drommerhausen said the properties were to belong to Daniel. Mr. Drommerhausen explained Daniel did the "dirty work" such as changing sinks, repairing properties, and handling unlawful detainer actions. Mr. Drommerhausen never said there was a plan to avoid estate taxes by having Daniel claim properties with no Roman numerals after his surname. Mr. Byrne never heard Mr. Drommerhausen express an expectation that Daniel would "take care of [Ms. Hutchings]" after claiming the properties to avoid estate taxes.

Mr. Byrne initially believed that ADCO belonged to Mr. Drommerhausen. However, Mr. Drommerhausen would describe ADCO as "Dan's" meaning Daniel. Thus, Mr. Byrne came to believe that ADCO belonged to Daniel. Mr. Byrne represented ADCO in a lawsuit about the time of Mr. Drommerhausen's death. But Mr. Byrne testified he "honestly wasn't sure of the exact" nature of ADCO be it a sole proprietorship or otherwise. Mr. Byrne testified that, even though he represented ADCO in the lawsuit, "It really was not made clear exactly who was what." Mr. Byrne testified: "I kind of presumed based upon the evidence and discussions that ADCO was originally [Mr. Drommerhausen]. It developed as far as my opinion and my thought process were concerned that it was then Dan, his son's, ADCO Investment." Mr. Drommerhausen never told Mr. Byrne that ADCO belonged to Daniel. But Mr. Byrne's perception was that such was the case based on "very regular" conversations. After Mr. Drommerhausen died, Mr. Byrne dealt with Daniel. Mr. Byrne did not consider Daniel to be a client.

Mr. Byrne was retained by Ms. Drommerhausen to represent the trust in a La Jolla lawsuit. Ms. Hutchings discharged Mr. Byrne as counsel for the trust. Mr. Byrne referred Daniel to another lawyer. Mr. Byrne stated that Mr. Drommerhausen was very knowledgeable about real estate.

Mr. Byrne testified that Mr. Drommerhausen wanted the properties to stay as part of the family. The parents would mention that Ms. Hutchings had her own life going and that Daniel "sacrificed his life" to help with the family business interests. Mr. Byrne presumed that the properties were a reward for Daniel's dedication to the family.

c. John Hum

While testifying at trial, John Hum was represented by an attorney. Mr. Hum's lawyer was hired by Daniel. Mr. Hum never heard Mr. Drommerhausen make any promises to Daniel about properties outside the trust. Mr. Hum has been good friends with Daniel for 40 years. They had consummated some business transactions. Mr. Drommerhausen assisted Mr. Hum on a foreclosure once but that was the extent of their business association. Testimony from Daniel's deposition was read into the record. Mr. Hum knew about Mr. Drommerhausen's intention to leave property outside the trust to Daniel. (Daniel testified that Mr. Drommerhausen helped Mr. Hum extensively with real estate matters.)

d. Diane Taylor

Diane Taylor testified that she is the branch manager for the Ladera Heights Wells Fargo Bank. Ms. Taylor was the private and personal banker for Mr. Drommerhausen and Ms. Drommerhausen since about the latter part of 1998. Mr. Drommerhausen opened an account in the name of ADCO at Ms. Taylor's office. Initially, Mr. Drommerhausen was the only one who had signature authority on the account but Ms.

Drommerhausen was later added as a signatory. The ADCO account was closed by Ms. Drommerhausen after Mr. Drommerhausen died. Ms. Drommerhausen instructed Ms. Taylor to open an account in Daniel's name because he had taken over the ADCO portion of the business. In 2001 or 2002, Mr. Drommerhausen told Ms. Taylor that Daniel would be taking over the business. This was because Mr. Drommerhausen's eyesight had deteriorated. After Ms. Drommerhausen died, Daniel came into the bank with Ms. Hutchings. Daniel placed Ms. Hutchings's name on the ADCO account.

Ms. Taylor knew that Ms. Drommerhausen did not like Ms. Hutchings's husband. Ms. Drommerhausen did not want her assets to go to Mr. Hutchings. Ms. Drommerhausen wanted the assets to stay in the family line and ultimately pass to Ms. Hutchings's son. Ms. Drommerhausen wanted to change the trust instrument so that the money stayed in the family. Daniel brought the trust instrument to the bank where another employee copied it and had it sent to the trust department for review. Ms. Taylor did not remember any conversation with Ms. Drommerhausen about changing the will and trust to leave more assets to Daniel than to Ms. Hutchings. Neither Mr. Drommerhausen nor Ms. Drommerhausen ever gave Ms. Taylor any indication that one of them deserved more than the other.

e. Steve Taylor

Mr. Taylor testified that on more than one occasion Mr. Drommerhausen expressed the wish that Ms. Hutchings would come to Los Angeles and become more involved in the family business affairs. Mr. Taylor had a 30-year business and social relationship with Mr. Drommerhausen. In Mr. Taylor's opinion the father and son "were always a whole together." Mr. Taylor worked with the father and son from approximately 1984 to 2003 on real estate deals. Mr. Taylor dealt with various Drommerhausen businesses including Hermosa Funding and ADCO. Mr. Taylor understood the businesses were owned by Mr. Drommerhausen and Daniel "being the

son." According to Mr. Taylor, Mr. Drommerhausen described ADCO as follows, "He said it was both his and his son's company."

Mr. Drommerhausen wanted a substantial portion of the real estate holdings to go to Daniel. But there were some properties Mr. Drommerhausen wanted placed in the trust to be divided between Ms. Hutchings and Daniel. According to Mr. Taylor, Daniel earned them and had worked for them. This included the businesses. Mr. Drommerhausen and Ms. Drommerhausen indicated that they wanted the jewelry to go to Ms. Hutchings. They told Mr. Taylor that it was jewelry valued at about $1 million. On her deathbed, Ms. Drommerhausen told Mr. Taylor that she did not want Mr. Hutchings to get anything. Mr. Taylor appeared at the trial represented by a lawyer that Daniel had hired.

f. Tina Taylor[3]

Tina is Mr. Taylor's wife. Tina knew Mr. and Ms. Drommerhausen for about 22 years. Ms. Drommerhausen said that there was a trust for their two children to share equally. There was jewelry that Ms. Drommerhausen wanted to go to Ms. Hutchings. Ms. Drommerhausen said that whatever property Mr. Drommerhausen and Daniel were working on in the business was to go to Daniel. ADCO was Mr. Drommerhausen's and Daniel's business. It was to belong to Daniel when Ms. Drommerhausen died.

g. Tracey Hum

Tracey Hum was a friend of Ms. Drommerhausen's since 1978. They saw each other about 10 times a year until Ms. Drommerhausen became ill. Ms. Drommerhausen and Daniel were very different from each other. Ms. Drommerhausen told Ms. Hum that

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3 For purposes of clarity, Tina Taylor will be referred to as Tina.

Daniel did not like being around his mother because they did not have anything in common and he was rude. Daniel rarely talked to Ms. Drommerhausen. Ms. Drommerhausen never told Ms. Hum that she was going to give more of her estate to either of her two children.

h. Laura Davalos

Laura Davalos testified that she assisted in the preparation of the trust instrument. Ms. Davalos was neither an attorney nor an expert in estate planning. Ms. Davalos was surprised that there was property outside of the trust. Ms. Davalos worked as an independent agent for the company that prepared the documents.

C. The Referee's Report and Recommendations

The referee found that credibility was a central issue. The referee found that Daniel's testimony lacked any indicia of reliability and trustworthiness. The report explained: "Unfortunately for [Daniel], the Referee is unable to give weight to [Daniel's] self-serving testimony. [Daniel] has provided a verified response to the petitions herein and verified responses to discovery and testimony under oath in which he provides shifting claims. In some cases he asserted under oath that he was the person who originally acquired certain property when such a claim was highly dubious. In other circumstances he claimed not only that he made loans of tens of thousands of dollars at a time when he was 30 years of age or younger, but that he could not recall the circumstances of the transactions. With regard to one property, he testified that deeds of trust of which he was beneficiary, aggregating $100,000 or more, represented valid and bona fide loans made by him while he was a young man, but he could give no explanation and had no memory of how he came to be in a position to make such loans

while he was a young man without professional training or employment. The tax returns produced by [Daniel] reflect his reporting of capital losses on property transactions where he was not the owner and in which he claimed a tax basis of his own creation. He admitted that his tax returns failed to include the salary paid to him by his parents." The referee awarded 38 real properties and 11 accounts to Ms. Hutchings.

D. The Probate Court's Orders

On March 6, 2006, the probate court entered orders adopting the referee's report and recommendation in all three probate cases. Notice of entry of judgments were served on March 14, 2006. On March 29, 2006, Daniel filed a notice of intention to move for a new trial and to vacate judgment in all three cases. The probate court denied these motions on May 12, 2006. On May 15, 2006, Daniel appealed the probate court's March 6 and May 12, 2006 orders.

III. DISCUSSION

A. Overview

Daniel raises a number of challenges to the probate court's order including: improper allocations of burdens of proof; failure to apply correct presumptions of ownership of property; and failure to enforce promises to convey property to Daniel. Daniel claims: the referee improperly allocated the burden of proof as to ownership of the specific items of real and personal property to Daniel rather than to Ms. Hutchings; the referee erroneously concluded that Mr. Drommerhausen's estate was entitled to reclaim property which he allegedly schemed to defraud creditors and to avoid taxes; the referee failed to apply the presumptions of ownership in favor of Daniel; the parents' repeated promises to convey properties to Daniel is enforceable under principles of

equitable estoppel; Daniel did not wrongfully withhold proceeds of property sales; Daniel is entitled to properties in the name of ADCO a partnership formed with Mr. Drommerhausen; Daniel is entitled to bank accounts by right of survivorship; and the referee erred in awarding prejudgment interest against Daniel.

B. Jurisdiction to Determine Title

Daniel claims that the referee lacked power to adjudicate title to a number of the properties because third parties were involved in the transactions. Generally, a probate court lacks power to decide a dispute between the estate and a third party who is not an heir or a person named in a testamentary instrument. (*Estate of Baglione* (1966) 65 Cal.2d 192, 196-197; *Philbrick v. Huff* (1976) 60 Cal.App.3d 633, 650; *Estate of Pieper* (1964) 224 Cal.App.2d 670, 681.) However, the probate court may properly resolve a dispute concerning title between the representative and heirs of the estate as between each other. (*Philbrick* v. *Huff, supra,* 60 Cal.App.3d at p. 650; *Estate of Pieper, supra,* 224 Cal.App.2d at p. 681.) There was nothing improper in resolving the title dispute between Ms. Hutchings, as the representative of the estates and the trust, and the beneficiaries, which in this case are Daniel and her. Further, the referee did not attempt to resolve ownership interests of third parties. For example, as to the property located at Victoria Avenue, the referee found that the parcel belonged to the estate. However, the referee also noted that there had been an assignment of a trust deed from Daniel to a Hugh Finkle in August 2003. The referee made no finding as to Mr. Finkle's interest.

C. Burden of Proof

Daniel contends the referee imposed the burden of proof on him rather than on Ms. Hutchings. The petitions were brought by Ms. Hutchings pursuant to section 850 to determine ownership of real property and bank accounts. Ms. Hutchings sought orders

pursuant to section 856 that the properties be transferred, conveyed, or determined as trust property. As the petitioner, Ms. Hutchings had the burden of proving the truth of her petitions. (Evid. Code, § 500; *Estate of Petersen* (1994) 28 Cal.App.4th 1742, 1747.) Nevertheless, as Daniel's response to the petitions illustrate, he also claimed ownership of property based on several different theories. For example, Daniel had the burden of proving that Ms. Hutchings is estopped to deny the promises of their parents to convey or give him property was subject to proof at trial. (*Mills v. Forestex Co.* (2003) 108 Cal.App.4th 625, 641[party relying on equitable estoppel as a defense has the burden of proof]; *Ringler Associates, Inc. v. Maryland Casualty Co.* (2000) 80 Cal.App.4th 1165, 1190-1191, fn. 14 [same]; *McKelvey v. Boeing North American, Inc.* (1999) 74 Cal.App.4th 151, 160 [same], superceded by statute on a different point in *Grisham v. Philip Morris U.S.A., Inc.* (2007) 40 Cal.4th 623, 637, fn. 8.) Likewise, Daniel had the burden of proving the claim that property held without a Roman numeral after the surname belonged to him. (*Chapman v. Tyson* (Wash. 1905) 81 P. 1066, 1068 [when title fails to distinguish between father and son with the same name, the presumption is that the property belongs to the father in the absence of proof to the contrary]; *In re Estate of Foster* (N.Y. 1940) 19 N.Y.S.2d 349, 351 [citing *Chapman* rule].) As the well-reasoned and extended referee's report and recommendations establish, the burdens of proofs were shifting throughout the trial due to the nature of the claims raised by the parties.

Furthermore, despite to Daniel's arguments to the contrary, Ms. Hutchings produced evidence during the trial. No doubt, much of the evidence produced and relied upon by the parties was Daniel's own testimony. But Ms. Hutchings was entitled to rely on his testimony in proving her case. (*Williams v. Barnett* (1955) 135 Cal.App.2d 607, 612; *Long v. Standard Oil Co.* (1949) 92 Cal.App.2d 455, 462.) We have examined the record and are satisfied that the referee did not somehow misallocate the burdens of production or proof in any way much less in a prejudicial manner as to Daniel.

D. The Evidentiary Presumptions

1. The Law

Daniel further argues the referee failed to apply the evidentiary presumptions that should have been afforded to the title documents. It should be noted that in making this sweeping contention and in the face of the overwhelming evidence presented during the trial, Daniel is really asserting that he is entitled to *conclusive* presumptions as to title. Evidence Code section 601 provides: "A presumption is either conclusive or rebuttable. Every rebuttable presumption is either (a) a presumption affecting the burden of producing evidence or (b) a presumption affecting the burden of proof." Evidence Code section 620 states, "The presumptions established by this article, and all other presumptions declared by law to be conclusive, are conclusive presumptions." A conclusive presumption is a rule of substantive law, rather than an evidentiary rule. (*People v. McCall* (2004) 32 Cal.4th 175, 184-185; *Kusior v. Silver* (1960) 54 Cal.2d 603, 619; *People v. Burroughs* (2005) 131 Cal.App.4th 1401, 1405; *Estate of Gill* (1971) 19 Cal.App.3d 496, 501; 1 Witkin, Cal. Evidence (4th ed. 2000) Burden of Proof and Presumptions, § 160, p. 301.) Evidence may not be received to contradict a conclusive presumption. (*People v. McCall, supra*, 32 Cal.4th at p. 185; *Melendrez v. D & I Investment, Inc.* (2005) 127 Cal.App.4th 1238, 1250, fn. 17; *Homestead Savings v. Darmiento* (1991) 230 Cal.App.3d 424, 432, fn. 6; *Gayton v. Pacific Fruit Express Co.* (1932) 127 Cal.App. 50, 61.) However, as shown below, the issues in this case were based on rebuttable rather than conclusive presumptions.

Rebuttable presumptions are evidence and as such can be weighed by the trier of fact. (*In re Marriage of Mix* (1975) 14 Cal.3d 604, 611-612; *Laird v. T. W. Mather, Inc.* (1958) 51 Cal.2d 210, 221; *Weil v. Weil* (1951) 37 Cal.2d 770, 788.) A disputable presumption may be rebutted by evidentiary facts. It is for the trier of fact to determine

whether the proffered evidence outweighs the presumption. (*In re Marriage of Mix, supra,* 14 Cal.3d at pp. 611-612; *Weil v. Weil, supra,* 37 Cal.2d at p. 788; *Olson v. Olson* (1935) 4 Cal.2d 434, 437; *In re Marriage of Freedman* (2002) 100 Cal.App.4th 65, 72-73; *McDonald v. Hewlett* (1951) 102 Cal.App.2d 680, 688.) The finding a rebuttable presumption has been overcome will not be reversed on appeal if supported by substantial evidence. (*In re Marriage of Mix, supra,* 14 Cal.3d 604, 611-612; *Weil v. Weil, supra,* 37 Cal.2d at p. 788; *In re Marriage of Friedman, supra,* 100 Cal.App.4th at pp. 72-73.)

2. Evidence Code section 662

Daniel argues he was denied the presumption, as the legal owner of certain parcels, that he is the owner of a full beneficial title under Evidence Code section 662 which provides: "The owner of the legal title to property is presumed to be the owner of the full beneficial title. This presumption may be rebutted only by clear and convincing proof." However, this presumption and its clear and convincing standard of proof, do not apply in all quiet title actions. Rather, the presumption, with its heightened standard of proof, only applies when legal title is *undisputed* and the parties are only seeking to resolve beneficial interests. (*Murray v. Murray* (1994) 26 Cal.App.4th 1062, 1066-1067; see *Toney v. Nolder* (1985) 173 Cal.App.3d 791, 793.) In this case, the very issue raised by the parties is whether Daniel has legal title to the properties Ms. Hutchings asserted belonged to either the estates or the trust. Thus, Daniel was not entitled to the presumption that he has the full beneficial interest.

3. Evidence Code section 622

Evidence Code section 622 provides, "The facts recited in a written instrument are conclusively presumed to be true as between the parties thereto, or their successors in

interest; but this rule does not apply to the recital of a consideration." The recital of consideration is not conclusive. (Civ. Code, § 1614[4]; *Treat v. Treat* (1915) 170 Cal. 329, 336; *Kott v. Hilton* (1941) 45 Cal.App.2d 548, 552; accord *Bertelsen v. Bertelsen* (1942) 49 Cal.App.2d 479, 483.) However, the party challenging the validity of the instrument has the burden of proof as to its invalidity, which may be established through extrinsic evidence establishing the absence of consideration. (Civ. Code, § 1615[5]; *Treat v. Treat*, *supra*, 170 Cal. at p. 336 ; *Estate of Hobart* (1947) 82 Cal.App.2d 502, 508-509; *Banducci v. Banducci* (1944) 63 Cal.App.2d 600, 604.) As the court explained in *Kott v. Hilton, supra,* 45 Cal.App.2d at page 552: "If the presumption is wholly irreconcilable with the facts and surrounding circumstances, it has been overcome. The burden of showing lack of consideration rests upon the party seeking to avoid or invalidate the instrument. [Citation.] This may be accomplished through direct evidence or upon one or more circumstances. If the evidence is cumulatively strong enough to overcome the disputable presumption, a trial court is justified in reaching a conclusion contrary to the recital." (*A*ccord, *Bertelsen v. Bertelsen, supra,* 49 Cal.App.2d at p. 483.) It is for the trier of fact to determine an absence of consideration for all the challenged transactions under all the circumstances. (*Kott v. Hilton*, *supra*, 45 Cal.App.2d at p. 553; *Estate of Baxter* (1950) 96 Cal.App.2d 493, 501-502.) The factfinder's determination that any particular transaction is sham and fictitious for want of lack of consideration which is substantiated by the record is not subject to reversal on appeal. (*Ibid*; see also *Banducci v. Banducci, supra,* 63 Cal.App.2d at p. 605.)

Here, the parties disputed whether Daniel owned a number of properties due to the nature of the transactions. Ms. Hutchings's theory was that these transactions were sham or fictitious based on the following evidence: Daniel had made substantial loans on

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4 Civil Code section 1614 provides, "A written instrument is presumptive evidence of a consideration."

properties at a time when he would have had little or no assets; deeds showed Daniel received properties for as little as $100; Daniel did not list properties he claimed ownership of in his 1996 marital settlement agreement; Daniel could not recall the details of the transactions; and Ms. Hutchings testified that she did not remember acquiring property for which deeds were placed in her name. The referee found more credible the evidence supporting Ms. Hutchings's contention that Daniel did not actually acquire any interests. Rather, Daniel acquired title under circumstances showing that the transactions were merely shams. (*Simmons v. California Institute of Technology* (1949) 34 Cal.2d 264, 271-272; *Kott v. Hilton*, *supra*, 45 Cal.App.2d at pp. 551-552, 554.)

For similar reasons, we reject Daniel's argument that the parol evidence rule barred the referee from considering extrinsic evidence that certain deeds and other instruments were sham documents. The primary issue in this case was whether the deeds were sham instruments intended by the parties to: deceive creditors; avoid paying taxes; or not intended to be binding or effective between the parties. The parol evidence rule bars consideration of extrinsic evidence to alter the terms of an integrated written instrument. (Code Civ. Proc., § 1856; Civ.Code, § 1625; *Casa Herrera, Inc. v. Beydoun* (2004) 32 Cal.4th 336, 343; *Alling v. Universal Mfg. Corp.* (1992) 5 Cal.App.4th 1412, 1433.) However, the parol evidence rule does not prohibit the consideration of extrinsic evidence which is offered to show that a written instrument is merely a sham document. (*P.A. Smith Co. v. Muller* (1927) 201 Cal.219, 222; *FPI Development, Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 401.) The parol evidence rule did not preclude the referee from considering extrinsic evidence to show that the signatories on the deeds did not intend them to be binding and intended them only as shams. In other words, such evidence is admissible to show that the written instruments were shams and never intended to have any legal effect. (*P.A. Smith Co. v. Muller*, *supra*, 201 Cal. at p. 222;

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5 Civil Code section 1615 states, "The burden of showing a want of consideration sufficient to support an instrument lies with the party seeking to invalidate or avoid it."

accord, *Parker v. Meneley* (1951) 106 Cal.App.2d 391, 401-402; see also *Yarus v. Yarus* (1960) 178 Cal.App.2d 190, 203.)

4. Evidence Code sections 600 and 638

Daniel also contends he was denied presumptions and inferences that he was the owner of property because he exercised control over the property pursuant to Evidence Code sections 600 and 638 respectively. Evidence Code section 638 provides, "A person who exercises acts of ownership over property is presumed to be the owner of it." The presumption of ownership unless there is other evidence must prevail in the absence of any other evidence of title. (*Kunza v. Gaskell* (1979) 91 Cal.App.3d 201, 208, citing *People ex rel. Dept. Pub. Wks. v. Shasta Pipe, etc., Co.* (1968) 264 Cal.App.2d 520, 534, overruled on a different point in *Merced Irrigation Dist. v. Woolstenhulme* (1971) 4 Cal.3d 478, 495.) This presumption is subject to rebuttal by production of contrary evidence. (*Adler v. Blair* (1959) 169 Cal.App.2d 92, 95; *People v. J.P. Loubet Co.* (1957) 147 Cal.App.2d 566, 568.) Daniel's claims of title even with acts of ownership were subject to rebuttal by contrary evidence.

Likewise, Daniel was not entitled to an "inference" of ownership under the circumstances of this case based on Evidence Code section 600, subdivision (b) which states, "An inference is a deduction of fact that may logically and reasonably be drawn from another fact or group of facts found or otherwise established in the action." Our Supreme Court explained this statute as follows: "Like a presumption, 'an inference is not itself evidence; it is the result of reasoning from evidence.' (Assem. Com. on Judiciary, com. on Assem. Bill No. 333 (1965 Reg. Sess.) [enacting Evid. Code] reprinted at 29B pt. 2, West's Ann. Evid.Code, *supra*, foll. § 600, p. 4.)" (*People v. McCall* (2004) 32 Cal.4th 175, 183.) The presumptions in Evidence Code section 600 are rebuttable. (*People v. McCall, supra*, 32 Cal.4th at p. 183.) Accordingly, as the

factfinder, the referee was entitled to draw his own inferences from the evidence presented by the parties.

5. Civil Code sections 1069, 1107, and 1217

Daniel claims that, in evaluating the validity of trust deeds, the referee failed to apply proper legal standards contained in Civil Code sections 1069, 1107, and 1217. Civil Code section 1069 states in part, "A grant is to be interpreted in favor of the grantee . . . ." Civil Code section 1107 provides: "Every grant of an estate in real property is conclusive against the grantor, also against everyone subsequently claiming under him, except a purchaser or incumbrancer who in good faith and for a valuable consideration acquires a title or lien by an instrument that is first duly recorded." Civil Code section 1217 states, "An unrecorded instrument is valid as between the parties thereto and those who have notice thereof." No doubt, recordation is not a prerequisite to the validity of a deed where third party rights are not at issue. (*Devereaux v. Frazier Mountain Park & Fisheries Co.* (1967) 248 Cal.App.2d 323, 328; *Pomper v. Behnke* (1929) 97 Cal.App. 628, 638; 54 Cal.Jur.3d pt. 2 (1998) Real Estate—Selected Topics, § 635.) Recordation was not the issue in this case. Rather, the issue was whether the deeds were valid or meant to be sham transactions.

As will be explained later in greater detail, there is substantial evidence Mr. Drommerhausen had perfected the art of obfuscating title on his numerous real estate holdings with the object of either avoiding taxes or creditor claims. There was overwhelming evidence of numerous transactions wherein Mr. Drommerhausen contemporaneously executed deeds, notes, and encumbrances on the properties that were not bona fide transactions. Mr. Drommerhausen routinely engaged in the practice of creating purported obligations or ownership interests in Daniel and others which were mere shams.

Daniel worked for over 25 years in the family real estate business. Daniel was very aware of Mr. Drommerhausen's practices and ultimately engaged in the same activities. The referee's report indicates: "It is also clear from the 1992 writing that [Mr. Drommerhausen] planned that after his passing [Daniel] could act as the record holder of title to many of the properties, without the burden of probate proceedings or estate, inheritance or transfer taxes or property reassessment. The record also shows that [Mr. Drommerhausen] had a strong aversion to paying taxes. No income tax returns were filed by the senior Drommerhausens for approximately ten years prior to their deaths. [Mr. Drommerhausen] held some deeds unrecorded for decades, apparently to avoid taxes." Notwithstanding Daniel's contentions, to the extent that the transactions were sham, he has no ownership interests in the properties. (See *Lee v. Joseph* (1968) 267 Cal.App.2d 30, 34.)

Moreover, we disagree with Daniel that the evidence fails to establish that he lacked knowledge of the schemes or did not participate in them. As will be noted, it is abundantly clear that Daniel is not an innocent bona fide purchaser of interests in the contested properties. (See *Evans v. Gibson* (1934) 220 Cal. 476, 482 [court may properly consider unfavorable evidence against person claiming innocence in real property fraudulent transaction scheme where "evidence discloses that the exchange with plaintiff was not an entirely separate and distinct transaction, but one of a series of successive transactions closely following each other in time and part of a comprehensive plan for mulcting innocent persons"].) In addition, the fact that Daniel is claiming property from transactions occurring with little or no consideration shows that the referee properly scrutinized those matters to determine whether the conveyances between the father and son were bona fide and not mere shams. (*Evans v. Sparks* (1915) 170 Cal. 532, 534 [court acts properly in scrutinizing conveyance between father and son which was purportedly made with no consideration and with intent to defeat creditors]; *Gray v. Galpin* (1893) 98 Cal. 633, 635 [whether a family member was connected to bad faith of

fraudulent purpose in a fraudulent or sham real estate transaction is factual and reviewed for substantial evidence].)

E. Evidence of the 1996 Marital Settlement Agreement

Daniel argues that the referee erred in considering evidence of his 1996 marital settlement agreement. Daniel reasons: "the undisputed evidence demonstrated that the document was drafted in haste"; the marital settlement agreement was drafted by his former spouse's attorney; he was not represented by counsel during the divorce; and the 1996 marital settlement agreement is irrelevant because it was not used to divide the couple's property. This issue is forfeited because Daniel has not established that he objected to consideration of the 1996 marital settlement agreement. (Evid. Code § 353; *Pool v. City of Oakland* (1986) 42 Cal.3d 1051, 1069; *O'Hearn v. Hillcrest Gym & Fitness Center, Inc.* (2004) 115 Cal.App.4th 491, 500.) We review relevance issues for an abuse of discretion. (*In re Freeman* (2006) 38 Cal.4th 630, 649; *People v. Panah* (2005) 35 Cal.4th 395, 474.) Part of Daniel's defense was that he had exercised control and ownership over certain real properties, businesses, and accounts. His failure to list the properties in the dissolution action was relevant as to his ownership claims. Also, the absence of the properties in the marital settlement agreement was relevant to the issue whether Daniel's testimony concerning ownership was believable.

F. Admissibility Of Tina's Mother's Testimony

Daniel argues the referee improperly excluded the proposed testimony of Miriam Rose Taylor, Tina's mother. The proposed testimony was that on an occasion, Ms. Drommerhausen attended a lunch with the Taylors. During the lunch, Ms.

Drommerhausen indicated that she intended to leave all the real estate to Daniel. The referee had broad discretion to exclude the testimony as cumulative given that several witnesses had testified the parents said they intended to leave real estate to Daniel. (Evid. Code § 352; *People v. Ramos* (2004) 34 Cal.4th 494, 529; *People v. Stoll* (1989) 49 Cal.3d 1136, 1140.) Daniel has not established that the referee abused his discretion by acting in an arbitrary, capricious, or patently absurd manner resulting in a manifest miscarriage of justice. (*People v. Rodrigues* (1994) 8 Cal.4th 1060, 1124; *Boeken v. Philip Morris, Inc.* (2005) 127 Cal.App.4th 1640, 1685.)

G. The Sufficiency Of The Evidence

1. Overview

At the trial, Ms. Hutchings's theory was that Mr. Drommerhausen had perpetrated numerous real estate sham transactions over the years. This included transferring title by grant and trust deeds and foreclosure sales while maintaining control and beneficial ownership of the properties. Ms. Hutchings argued Mr. Drommerhausen did this in order to avoid paying taxes and to avoid creditors. Daniel contends: he is the owner of properties expressly titled Daniel G. Drommerhausen III; he is the owner of properties titled "Daniel G. Drommerhausen" with no roman numeral; and he owns some real properties based on the parents' promises to convey them to him upon their deaths for his decades of service to the family real estate business. Daniel further claims he is the owner of 11 bank accounts by right of survivorship as a joint owner of the accounts. The referee resolved the bulk of the issues in favor of Ms. Hutchings. Review of the referee's finding in a section 850 action is for substantial evidence. (*Estate of Cross* (1975) 51 Cal.App.3d 80, 83; *Estate of Johnston* (1970) 12 Cal.App.3d 855, 861-862.)

2. Property standing in Daniel III's name

a. referee's findings

Daniel contends he is the owner of property expressly titled Daniel G. Drommerhausen III. Daniel argues: the referee failed to apply the proper legal standards in evaluating ownership of the properties; there is insufficient evidence to overcome the presumptions of ownership in favor of Daniel; the referee erred in concluding that proceeds from property Daniel sold in 2005 which had grant deeds in his name were owned by the estates; and the referee erred in considering Daniel's 1996 marital settlement agreement as "controlling evidence."

The referee found: "In most circumstances the fact that property stands unequivocally in the name of a person other than the decedent would be the beginning and the end of the analysis of whether the property was an asset of the estate. Here the executor contends that the pattern of transactions entered into during the lifetime of [Mr. Drommerhausen] demonstrates that [Mr. Drommerhausen] frequently placed title, or purported security interests, into the name of [Daniel] or other family members or business associates through recorded instruments that were sham and without economic substance. [Ms. Hutchings] contends the challenged documents were recorded for the purpose of misleading creditors or third parties with claims to title. [¶] The Referee finds in favor of [Ms. Hutchings], as executor. The Referee's findings are based on the following factors: the inherent implausibility of many of the transactions, such as [Daniel] obtaining beneficial ownership of $175,000 worth of deeds of trust in a short period when [Daniel] had no apparent source of funds for such investments; the fact that interests were recorded in [Ms. Hutchings's] name without her knowledge and without economic substance; purportedly valuable interests were conveyed that recited consideration of less than $100; purportedly valuable security interests were reconveyed without any consideration; interests were placed in names of [Mr. Drommerhausen's]

mother-in-law, and [Daniel's] then fiancé, which were subsequently reconveyed to [Daniel]; the failure of [Daniel] to include on his 1996 Marital Settlement Agreement any reference to many valuable properties or security interests that he now claims were his prior to the 1996 dissolution of marriage; the fact that [Mr. Drommerhausen] appears to have maintained control over the properties, and acted as if he were the sole owner during his lifetime; [and] [Daniel] has produced no evidence that he, rather that [Mr. Drommerhausen], enjoyed the economic benefits and burdens of property ownership during [Mr. Drommerhausen's] lifetime, rather [Daniel] was paid a $48,000 annual salary and bonuses for his work on the properties. [¶] The fair inference from the evidence, the Referee finds is, as [Ms. Hutchings] contends, that [Mr. Drommerhausen] routinely placed title or deeds of trust in the names of his family members or business associates while maintaining full control and equitable ownership in himself. [¶] Petitioner contends that such record interests were created to mislead creditors, including judgment creditors, or to defeat junior lien holders, or for similar purposes. Such contentions may be plausible, and indeed the evidence includes a number of judgment liens against [Mr. Drommerhausen]. Such judgment liens support Petitioner's contentions. However, the motivation behind such transactions is not at issue. What is at issue in this case is whether the interests standing in the name of [Daniel], supported by all presumptions in favor of record title holders, have been shown to be mere interests of bare legal title. [¶] The title documents and security instruments record by [Mr. Drommerhausen] lead the Referee to concluded that [Mr. Drommerhausen] maintained control and equitable ownership of most of the disputed properties or security interests standing in the name of [Daniel]. [¶] From the pattern of transactions engaged in by [Mr. Drommerhausen], the Referee makes the further finding that the deeds and deeds of trust presented in this matter in support of the claims of [Daniel] that appear to have been orchestrated by [Mr. Drommerhausen] are unreliable and insufficient, by themselves, to support a finding that [Daniel] holds more than bare legal title to property or to a security interest in real property. . . . Similarly, the Referee finds that [Daniel's] sworn testimony or declaration

is insufficient, in and by itself, to support such findings. [¶] The Referee will consider individually each property in which [Mr. Drommerhausen] acquired title or a security interest contemporaneously or prior to the recording of an interest in the name of [Daniel] to determine if some independent evidence supports [Daniel's] claim of equitable as well as legal ownership."

b. 1146 East 215th Street, Carson

The property located at 1146 East 215th Street in the city of Carson was acquired pursuant to a grant deed conveyed on April 29, 1976 by Preston and Lottie Smith. The Smiths assigned their trust deed to Ms. Drommerhausen's mother, Ebba Moraw. Ms. Moraw foreclosed on her son-in-law's default on November 3, 1977. Minnie Dahl took title to the property by a trustee's deed upon sale on April 4, 1978. Daniel testified that he never met Ms. Dahl. Daniel testified she was an associate of Mr. Drommerhausen's attorney during this time period. The trustee was Mr. Drommerhausen's business associate, Charles I. Monti. The property was conveyed on October 28, 1983, by grant deed from Ms. Dahl to "Daniel G. Drommerhausen III, a single man." The October 1983 deed was not recorded. The consideration for the transaction was less than $100. Daniel testified that he paid off a loan on the 1146 East 215th Street property from personal funds in 2003. Daniel did not recall the details of the property transaction with Ms. Dahl. Daniel did not identify the property in his marital settlement agreement. The referee, who found these transactions to be "a striking example of [Mr. Drommerhausen's] recording of untrustworthy instruments" ruled that the property belonged to the estates. The referee's findings are supported by substantial evidence.

c. 328 West 235th Street, Carson

In October 2004, a deed of trust was assigned to Mr. Drommerhausen for the property located at 328 West 235th Street in Carson. A year later the property was transferred by grant deed from Jack Clark Blevin dated October 15, 1975 to Daniel, a single man. A trust deed was signed by Daniel in favor of Mr. Belvin. One month later, the trust deed was assigned to Ms. Hutchings. Yet Ms. Hutchings had no knowledge of this transaction. Ms. Hutchings did not recall receiving any loan payments from Daniel for a loan on the 328 West 235th Street property. Daniel did not remember how he acquired the property. Daniel did not list the property in his 1996 marital settlement agreement. Several judgments were recorded against the property against Daniel Drommerhausen or Mr. Drommerhausen's fictitious businesses. The referee found: "Once again it is hard to believe that [Daniel] acquired a bona fide interest in this property at the age of 28, and did not remember it at the time of the dissolution of his marriage. Once again the record does not contain evidence that [Daniel] rather than [Mr. Drommerhausen] was treated by the Drommerhausens as the owner of this property during the lifetime of his father. The more reasonable inference is that [Mr. Drommerhausen] acquired the equity in this property in 1974 and thereafter placed interests in the names of his children as nominees to hold bare legal title." The findings are supported by substantial evidence.

d. 438 West 235th Street, Carson

Mr. Drommerhausen acquired ownership of the property located at 438 West 235th Street in Carson in1969 by grant deed from the Layns. On August 26, 1974, Mr. Drommerhausen granted mineral, water, and other rights on the property to Ms. Hutchings. In 1974, the Layns obtained a judgment quieting title to the property in their names except for a trust deed in favor of Daniel G. Drommerhausen. On June 28, 1977,

John and Glendora Packwood, who were friends of Mr. Drommerhausen, foreclosed on a trust deed. Vennie Turner, a business associate of Mr. Drommerhausen, acquired the property from the foreclosure. Mr. Turner executed a grant deed on the property to LoRey Bear on July 22, 1977. On the same date a trust deed was recorded by Ms. Bear in favor of Mr. Turner. Mr. Turner assigned the trust deed to Ms. Hutchings on August 8, 1977. The property was transferred from Ms. Bear to Daniel by grant deed on August 10, 1977. In 2002, Ms. Drommerhausen signed a lease on the property. Daniel did not list the property in his marital settlement agreement. The referee found that the title on the property should be viewed with skepticism. This is because Mr. Drommerhausen retained control and beneficial ownership in the property. Substantial evidence supports the referee's findings that instruments recorded on the 438 West 235th Street property were shams.

e. 1509 West 257th Street, Harbor City

Pursuant to a June 1989 Memorandum of Intent and Agreement, Mr. Drommerhausen and Mr. Taylor agreed to acquire the property located at 1509 West 257th Street, Harbor City. The agreement provided that they would develop a six-unit apartment building on the property. Mr. Drommerhausen obtained a loan to purchase the property. However, the property was to vest with one-half interest in Mr. Taylor. Daniel was to be vested with the remaining one-half interest. Daniel testified that title vested in him because the transaction was a business venture to develop the property. Mr. Drommerhausen was just "a source of funds" or "the bank" for the transaction. Mr. Drommerhausen wanted Daniel to get some experience in the construction business. Because of the real estate market, Mr. Taylor decided it was not financially advantageous and bowed out of the project. Daniel then became the owner of the property. During this period of time, there were many lawsuits pending against Mr. Drommerhausen.

Mr. Taylor testified concerning a June 1989 Memorandum of Intent and Agreement. The agreement was entered into with Daniel G. Drommerhausen. Mr. Taylor understood the reference to "Daniel G. Drommerhausen" to refer interchangeably to Mr. Drommerhausen or Daniel. At one point, Mr. Taylor testified that the title holder was to be Daniel. But according to Mr. Taylor, ownership of the property was to be "both" Mr. Drommerhausen and Daniel "collectively." The project was to be used as a "learning" experience for Daniel.

On January 7, 1992, Mr. Taylor granted his one-half interest in the property to Daniel. Daniel could not remember the specifics of the transfer. Daniel could not recall if the property was given to him as a gift. Daniel did not include this property in his 1996 marital settlement agreement. Mr. Taylor testified that "no money . . . exchanged hands" when the 50 percent interest in the property was transferred to Daniel. As consideration for the grant deed, Daniel gave Mr. Taylor "forgiveness of any future involvement" in the Harbor City property. According to Mr. Taylor, he would have been obligated to pay 50 percent of the costs of developing the property, which he did not want to do.

The referee's report states: "The Referee finds that the original acquisition of this property was for the benefit of [Mr. Drommerhausen] and Mr. Taylor. Clearly [Mr. Drommerhausen] was the only Daniel Drommerhausen who obtained the funds necessary for the acquisition, and the only Daniel Drommerhausen with obligations under the partnership agreement. At the stage of acquisition of the property, the Referee concludes that the interest held by [Daniel] was bare legal title for the benefit of [Mr. Drommerhausen]. [¶] At the time Mr. Taylor conveyed his interests, a separate analysis is required. By that time the original purpose of the acquisition was frustrated. Mr. Taylor's interest was being transferred without additional consideration. Therefore, it is not wholly implausible that [Mr. Drommerhausen] intended title to Taylor's interest, which was being acquired for nothing, be held by [Daniel] for his own benefit. On the other hand, however, the record shows again that no interest in this property was included by [Daniel] in his Marital Settlement Agreement and there is no evidence that [Daniel]

received one half or any portion of the income or expenses on this property. Once again, it appears that this property was treated as property owned by the senior Drommerhausens during their lifetimes." The referee's findings are supported by substantial evidence.

f. 4220 West 64th Street, Inglewood

There is a trustee's deed upon sale dated January 11, 1977 vesting title in the property located at 4220 West 64th Street, Inglewood in Daniel. Daniel testified at his deposition that he could not remember how he acquired the property. At trial, Daniel testified that it was his house and he lived there. He testified that he "found" the property after losing his home in Carson in an eminent domain proceeding. However, there were trust deeds on the 4220 West 64th Street property between 1963 and 1976 in which Mr. Drommerhausen was the beneficiary.

The referee found the 1977 deed was a sham and conveyed only bare legal title to Daniel. The conclusion was based on: the absence of evidence of any payment on the contract; the absence of evidence that the parents treated the property as if it was owned by Daniel during their lifetimes; and the failure of Daniel to list the property in his dissolution settlement agreement. The conclusion that the property belonged to the estates based on the finding the 1977 deed was a sham was supported by the evidence.

g. 947 East Fiat Street, Carson

On January 6, 1977, an assignment of a trust deed was made to Daniel G. Drommerhausen for property located at 947 East Fiat Street in Carson. Daniel did not know if he was the assignee. However, Daniel admitted that a notice of default dated April 30, 1977 was signed by Mr. Drommerhausen. A trustee's deed upon sale dated November 1, 1977, transferred the property to Daniel based on the default of Lee

Ahmuda. Daniel did not recall acquiring the property at the foreclosure. Daniel did not include the property in his 1996 marital settlement agreement.

The referee noted that Daniel was approximately 20 years old at the time this property was acquired but could not remember such a significant event. (At the time of the 1977 deed of trust was executed, Daniel III would have been approximately 30 years old.) The referee found Daniel's claim of ownership was predicated on a sham transaction vesting only bare legal title in him. Substantial evidence supports the referee's finding.

h. 918 through 920 Centinela, Inglewood

A trust deed dated February 14, 1989, from Greg Phillips to Daniel G. Drommerhausen, doing business as Grant Funding, was introduced for property located at 918 through 920 Centinela in Inglewood. Daniel testified that he was "involved" in Grant Funding. Daniel did not recall making a loan on the property. A quitclaim deed dated March 16, 1990, from Mr. Phillips and Sam Parker to Daniel was recorded on March 22, 1990. A trustee's deed upon sale dated March 16, 1990 was signed by Sharon Wright, as trustee, and stated Daniel G. Drommerhausen was the grantee. Daniel testified the property was quitclaimed to him rather than go through a foreclosure. The property is listed in Schedule A of the trust as trust property. The property was quitclaimed by Mr. Phillips.

The referee's report states: "This sequence of recording clearly shows that [Mr. Drommerhausen] knew well that he could vest legal title unambiguously in [Daniel] if he chose to do so. Here [Mr. Drommerhausen] retained an unrecorded deed that he could claim would prevail over the recorded quit claim deed at whatever time he chose to

record it. [Daniel] did not include this property in his 1996 Marital Settlement Agreement. [Mr. Drommerhausen] and [Ms. Drommerhausen] explicitly listed this property on Schedule A to the trust in 1995. The Referee concludes that [Mr. Drommerhausen] maintained control and equitable ownership of this property." The referee concluded the property belonged to the estates rather than to Daniel. The referee's report stated that the property belonged to the estates even though it is listed as a trust asset. In any event, the referee's conclusion was that it did not belong to Daniel. The referee's findings, as they relate to the fact the property does not belong to Daniel, are supported by substantial evidence.

i. 25718 Eshelman, Torrance and 140 The Village #208, Redondo Beach

Ms. Wright was the record title holder of properties located at 25718 Eshelman, Torrance and 140 The Village #208, Redondo Beach. Apparently, Ms. Drommerhausen was suspicious of the nature of the relationship between Mr. Drommerhausen and Ms. Wright. Daniel testified that, prior to their deaths, his parents instructed him to negotiate with Ms. Wright and have her name removed from the title. According to Ms. Hutchings, Ms. Drommerhausen was angry and humiliated because of his relationship with Ms. Wright.

After Mr. Drommerhausen's death, Daniel negotiated a settlement with Ms. Wright as to the Torrance properties. Ms. Wright would transfer the properties to Ms. Drommerhausen, Ms. Hutchings, and Daniel. The settlement agreement was signed by Ms. Drommerhausen, Ms. Hutchings, and Daniel. Daniel obtained a quitclaim deed dated July 24, 2003 from Ms. Wright as part of the settlement agreement to property located at 25718 Eshelman, Torrance. On July 24, 2003, Daniel was the sole successor

trustee of the trust. Daniel denied instructing Ms. Wright to quitclaim the properties to him. However, in August 2002, Ms. Wright's attorney wrote a letter to Daniel. The letter confirmed that Daniel had instructed Ms. Wright to quitclaim the property to him. After Daniel's parents died, an unrecorded grant deed dated May 8, 1980 from Ms. Wright to him on the 25718 Eshelman property was discovered. Daniel was entirely unaware of the grant deed until after his parents died.

The referee found Daniel acquired only bare legal title by the deeds and the properties belonged to the estates. The referee found Daniel had no knowledge of the assignment on the 25718 Eshelman property until the death of Mr. Drommerhausen. The referee rejected Daniel's contention that Ms. Wright owned the properties and could transfer title to anyone she chose. Rather, the referee found that Ms. Wright had a contractual obligation to deliver title for the benefit of Ms. Drommerhausen, Ms. Hutchings, and Daniel. Substantial evidence supports these findings.

j. 26258 and 26264 Fairside Road, Malibu

The property at 26258 Fairside, in Malibu was acquired by grant deed dated December 22, 1978 to Mr. Bryant and "Daniel G. Drommerhausen." Daniel conceded the properties were acquired by Mr. Drommerhausen. Daniel testified that he had several trust deeds on the property from loans he had made which he foreclosed on in September 2004. The title documents contained the following trust deeds for the 26258 property securing: an indebtedness of $27,500 dated January 8, 1979, with Mr. Bryant as trustor and Daniel; an indebtedness of $20,000 dated July 2, 1979, from Mr. Bryant to Daniel; an indebtedness of $20,000 dated June 27, 1979, from Mr. Bryant and Mr. Drommerhausen to Daniel; and an indebtedness of $29,500 dated October 19, 1979, from Mr. Drommerhausen to Daniel. Daniel testified that he made the loans on the property. Daniel, however, could not remember where he worked during the time the loans were made. He testified that he worked in the aerospace fastener business. Daniel testified that he had no recollection of making the loans but because the deeds were recorded he

took them to be official. Daniel did not identify the four trust deeds of approximately $100,000 in his 1996 marital settlement agreement.

Mr. Bryant and Mr. Drommerhausen acquired the property located at 26264 Fairside, in Malibu by grant deed from Beverly Higgins dated December 22, 1978. Mr. Bryant and Mr. Drommerhausen gave trust deeds back to Ms. Higgins dated December 20, 1978, on the 26264 Fairside property which was two days before they acquired the property. Mr. Bryant and Mr. Drommerhausen also gave a trust deed on December 27, 1978, to Ms. Higgins. Mr. Bryant and Mr. Drommerhausen gave a trust deed to Daniel dated June 27 1979 and recorded November 20, 1979, securing a debt of $20,000. Exhibit No. 158 which is dated December 15, 1980, is a trustee's deed upon sale with Edward Higgins as trustee and Charles Monti as the grantee. Exhibit No. 161, which is dated September 2004, is a foreclosure by Daniel on the 26264 Fairside property. Mr. Monti was a person that Mr. Drommerhausen had a business relationship with in connection with a number of transactions. Daniel testified that, after he foreclosed on both properties in September 2004, he sold them for $750,000. Daniel's parents told him in 2000 or 2001 that he could have the money after he sold the properties.

The referee found the estate owned the proceeds from the sale of the property located at 26264 Fairside Road. In so doing, the referee also found that the trust deeds on the property were not bona fide. The referee relied on evidence Daniel did not list Malibu property in his 1996 marital settlement agreement. The referee relied on evidence Daniel claimed ownership based on a 1991 trust deed reciting that he paid less than $100 in consideration. The referee further found, "[T]he more reasonable inference is that these various instruments were sham and were without economic substance" or, alternatively, "[Daniel] was not even aware of them." The referee found the deeds were intended to allow Mr. Drommerhausen to retain control while vesting record title in a family member or associate. The referee's findings the transactions are sham are supported by the evidence.

Likewise, the referee's determination that the proceeds from the sale of 26258 Fairside Road property belong to the estate is supported by substantial evidence. The referee found: there were trust deeds recorded in favor of Daniel in the aggregate amount of $175,000 at a time when Daniel was 32; Daniel had no professional training or employment; and Daniel did not list the purported ownership interest in his 1996 marital settlement agreement. The referee's determinations that the deeds were sham and without economic substance are supported by substantial evidence.

3. Trust property sold by Daniel

The parties disputed whether Daniel had improperly retained proceeds from the sale of trust property. The properties were located at: 18924 Napa Street, in Los Angeles; 564 East Hillsdale Street, in Los Angeles; 1145 East 78th Street in Los Angeles; and 1600 Oak Avenue in Manhattan Beach. First, Daniel testified that property located at 18924 Napa Street in Los Angeles was vested in the trust. Mr. Drommerhausen died in January 2003 and Ms. Drommerhausen died in August 2003. On August 19, 2003, Daniel signed a grant deed as successor trustee of the trust transferring the property to himself. Then the property was transferred to Hugh Finkle Enterprises. Mr. Finkle was a former business associate of Daniel. Daniel claimed the sale of the property on his 2003 income tax return as a capital loss. Daniel testified that he placed the proceeds from the sale in the amount of $198,000 in a bank account belonging to the trust. However, at his deposition, Daniel testified that he placed the money in his own personal trust account. According to Daniel, he was willing to distribute the proceeds of the sale.

Second, Daniel testified he transferred trust property located at 564 Hillsdale Street, Los Angeles by grant deed to himself on August 19, 2003. Daniel sold the property for about $120,000 and kept the proceeds. Daniel reported the property sale on his 2003 tax return as a capital loss. According to Daniel, his parents had agreed to allow

him to keep the proceeds to make up for a loss on the sale of a different property located at Exposition Place. However, Daniel also testified that the Exposition Place property belonged to the trust. Daniel gave the money from the sale of the Exposition Place property to Ms. Drommerhausen. Daniel admitted that he never personally owned the Exposition Place property. After his parents died, Daniel requested Ms. Hutchings resign as co-successor trustee in order to facilitate the sale of the Napa and Hillsdale properties. However, Daniel never advised Ms. Hutchings that he intended to keep the proceeds from the Hillsdale property sale.

Third, Daniel testified that he sold trust property located at 1145 East 78th Street, Los Angeles. Daniel transferred title by grant deed to Terry Tyson in September 2003. Daniel sold the property without Ms. Hutchings's knowledge or consent. According to Daniel, he placed the $100,000 in funds in his own personal trust account but that he was willing to distribute the proceeds from the sale. The referee found that the properties located at 18924 Napa Street, 564 East Hillsdale Street, and 1145 East 78th Street were trust properties. The referee further found that Daniel was wrongfully withholding the proceeds from the sale from the three properties. Substantial evidence supports the referee's findings that the properties belonged to the trust.

Fourth, about four weeks before Ms. Drommerhausen died, Daniel sold trust property located at 1600 Oak Avenue in Manhattan Beach. The property sold for about $700,000. Daniel kept the proceeds of the sale because his mother gave them to him. Ms. Drommerhausen told Daniel she wanted him to have the check because she appreciated all the work he had done. Daniel initially refused to accept the money but because Ms. Drommerhausen was adamant he finally accepted it. Daniel reported the sale of the property as a capital loss on his 2003 income tax form. He testified that he did this because there were a lot of loans on the property. The referee concluded that the property located at 1600 Oak Avenue, which had been sold for approximately $700,000, belonged to the trust. The finding that the trust owned the property is supported by substantial evidence.

4. Property held with no Roman numeral

a. 6537-6541 South Victoria Avenue, Los Angeles

The properties located at 6537, 6539, and 6541 South Victoria Avenue in Los Angeles were acquired by Mr. Drommerhausen and Carol Clarke at a sheriff's sale. There is a certificate of sale of real property dated January 23, 1996 transferring the property to Ms. Clarke and "Daniel G. Drommerhausen," partners doing business as Grant Funding Co. Mr. Drommerhausen was the partner in Grant Funding Co. Exhibit No. 63 is a document dated April 29, 2004, from Ms. Clarke and "Daniel G. Drommerhausen," partners doing business as Grant Funding Co. to Daniel G. Drommerhausen, an unmarried man. The property was conveyed to Daniel after his parents died. Daniel admitted that this property was acquired by Mr. Drommerhausen and Ms. Clarke. However, Daniel testified that he only obtained the grant deed to remove Ms. Clarke's 50 percent ownership and clear title.

Also, on April 25, 2004, John H. Packwood's attorney in fact, Glendora S. Packwood, assigned a deed of trust to Daniel on the properties. Daniel testified that he signed a quitclaim deed on August 7, 2003 on the Victoria Avenue property. However, exhibit No. 73 is an assignment of a trust deed dated August 7, 2003 signed by "Daniel G. Drommerhausen" to Hugh Finkle Enterprises. August 7, 2003, was after Mr. Drommerhausen had died. Daniel testified that the document was a forgery. Daniel testified at his deposition that the signature on exhibit No. 73 was his and that when he signed the document he thought it was a quitclaim deed.

The referee found: "Apparently [Daniel] had previously taken the position that he was the Daniel G. Drommerhausen to which the deed referred. At trial he admitted that the property was titled in his father's name and Carol Clark, doing business as Grant Funding. Grant Funding was a fictitious name used by the father and perhaps other

associates. In any event, it is now clear that [Daniel] was unable to convey any title to the property in the April 2004 deed. He testified that the deed was merely to get Carol Clark's name off [the] title. Thus, [Daniel] has confirmed that Ms. Clark had no true ownership interest in the property at the time of the deaths of the Drommerhausen parents. Ms. Clark has now removed herself from [the] title. Therefore the Referee finds that [Daniel's] title is bare record title held for the benefit of the estates." These findings are supported by substantial evidence.

b. 431 West 234th Street and 18619 Wall Street, Carson

The property located at 432 West 234th Street, in Carson was granted to "Daniel G. Drommerhausen" by deed dated July 17, 1969. Daniel testified that Mr. Drommerhausen purchased the property. Mr. Drommerhausen purchased the property for Daniel. According to Daniel, the West 234th Street property was purchased for him while his National Guard unit as called to active service. In 1973, Mr. Drommerhausen told Ms. Hutchings that he acquired this property along with four other properties in Carson by paying a broker $10 for trust deeds on defaulted mortgages. In that 1973 conversation, Mr. Drommerhausen never mentioned purchasing the properties for Daniel. The West 234th Street property was not listed on Daniel's 1996 marital settlement agreement.

The property located at 18619 Wall Street in Carson was acquired by "Daniel G. Drommerhausen" pursuant to a grant deed. Daniel dealt with Ronald and Betty Emms in matters relating to the Wall Street property. Daniel recalled working on the property and disagreeing with Mr. Drommerhausen about some tenants at the property. Daniel recalled finally evicting the undesirable person when Mr. Drommerhausen's business activities ceased. Daniel could not recall how he financed the purchase. At his deposition, Daniel testified that he recognized the Emms' name but he could not recall

any specific dealings with them. Daniel believed that, even if the property was not acquired by him in 1971, it went to him because it was not in the trust.

The referee found that the 234th and Wall Street properties belonged to the estates. The determination was based on the following evidence: Daniel did not list the properties in his 1996 marital settlement agreement; neither Daniel nor his parents treated him as the owner of the properties; and Daniel's testimony lacked credibility. The referee ruled: "In the Referee's view it is simply inconceivable that a person could acquire one or two parcels or property at that age and have no meaningful recollection of how his ownership came about, or whether or not he provided the money for the acquisition. Moreover, it is simply not credible that Daniel would have omitted form his schedule or separate property the first two properties he ever acquired if indeed he had been the actual owner of the properties." The referee's findings and credibility determinations are supported by substantial evidence.

c. 19899 Grand View, Topanga

The property located at 19899 Grand View in Topanga was acquired by Mr. Drommerhausen and Bruce Bryant in 1979 in exchange for a trust deed. In 1979, three trust deeds were recorded in favor of Daniel securing debts of $50,000. Daniel did not recall the specifics of making the loans. A trust deed was recorded on December 26, 1980, in favor of Ms. Hutchings securing a debt of $20,000. Ms. Hutchings testified that she had no recollection of making a $20,000 loan to her father or Mr. Bryant in 1979, which amount exceeded her annual income at that time as a flight attendant. This trust deed was notarized on January 20, 1979.

On July 6, 1984, William C. Peters foreclosed on his trust deed on the Grand View property. Daniel's ex-wife, Ann Brooks, acquired the property by foreclosure against Mr. Drommerhausen and Mr. Bryant on July 10, 1984. Ms. Brooks secured title

to the Grand View property, rather than Mr. Peters, because her lien was senior to his. At the time, Ms. Brooks was Daniel's girlfriend. The property was not included in Daniel's 1996 marital settlement agreement. Ms. Drommerhausen obtained a quitclaim deed from Ms. Brooks to "Daniel G. Drommerhausen" on August 28, 1996; a week after Daniel's divorce.

The referee found that the state of the record on the property was "very curious." The referee cited evidence that deeds of trust were recorded in Ms. Hutchings and Daniel's names around 1979. Ms. Hutchings had no recollection of loaning $20,000 to anyone at that time which exceeded her annual income. There were also trust deeds recorded on this property and others securing purported loans in the amount of $175,000 from Daniel. The referee found: "The most reasonable inference from this evidence is that the recorded instruments were bogus and were an attempt to mislead creditors. Thus, the conclusions appear inescapable that [Mr. Drommerhausen] used sham instruments to create apparent interests of record in people close to him while retaining full control of the property. [¶] The foregoing, while important, is not directly relevant to [Daniel's] claim to the property. All of the foregoing deeds of trust were eliminated when Mr. Peters foreclosed in 1984 on his superior deed of trust. However, Mr. Peters' interest was similarly eliminated when a still superior deed of trust was foreclosed. After the foreclosure, record title was vested in Ann Elizabeth Downie. The superior trust deed had been assigned to Ms. Downie in 1983. At that time Ms. Downie was [Daniel's] girlfriend, later for several years, his wife. The property is not mentioned in the Marital Settlement Agreement. After the divorce Ms. Downie executed a quitclaim deed in favor of Daniel G. Drommerhausen. [Daniel] testified that his relations with his ex-wife were difficult following their divorce. The deed was obtained by Marjorie Drommerhausen without [Daniel's] involvement. This deed has never been recorded. We have no evidence that [Daniel] was treated by himself or his parents as the owner of this property during the lifetimes of the senior Drommerhausens. [¶] The obvious conclusion to be drawn from this series of transactions is that Ms. Downie's deed of trust was obtained by

[Mr. Drommerhausen] for her to serve as nominee for [Mr. Drommerhausen]. Ms. Downie was then the fiancé of [Mr. Drommerhausen's] son. [Mr. Drommerhausen] could not accept record ownership of the deed of trust while he held a fee interest in the property without eliminating the deed of trust under the doctrine of merger. It is inconceivable that if Ms. Downie had been the true owner of the property in Topanga, and that property had sufficient equity to support $50,000 in deeds of trust in 1979, the property would not be included by either party in the Marital Settlement Agreeement. [¶] The only reasonable conclusion is that Ms. Downie held a record interest merely as a nominee for [Mr. Drommerhausen], and equitable ownership was in [Mr. Drommerhausen] at all times when she held record ownership. The only reasonable inference is that the 1996 deed conveyed title to [Mr. Drommerhausen]." Daniel has provided no legal basis for setting aside these resolutions of the evidence establishing ownership by the estates.

d. lot 26, tract 5494, Victorville

Exhibit No. 143 is a trust deed dated December 10, 1971, from Elsie Till to Ruth O'Quinn. Lot 26, tract 5494, was acquired at a sheriff's sale on execution dated July 11, 1974. The grantee is "Daniel G. Drommerhausen." Exhibit No. 145 is an assignment of deed of trust dated July 16, 1974, from Ms. O'Quinn to Daniel, five days after the sheriff's sale. Daniel acknowledged that Mr. Drommerhausen used "straw people on occasion[s]" in business transactions. Daniel claimed to be the person who acquired the Victorville property at the July 1974 sheriff's sale.

The referee found that the property belonged to the estates. The report states that Daniel claimed to be the purchaser of the property at the 1974 sale. The referee found it not credible that Daniel would have purchased the property and then recorded an assignment of a deed of trust in his name 13 days later. The referee found: the

assignment was a device used by Mr. Drommerhausen for the apparent purpose of misleading creditors; Daniel had not listed this note on his 1996 marital settlement agreement; and the more plausible explanation was that Mr. Drommerhausen acquired the property and put Daniel's name on the title documents to confound creditors. The finding that this is estate property is supported by substantial evidence.

5. Disputed Trust Properties

a. Overview

The undisputed evidence established that five properties identified in the trust were sold after Mr. Drommerhausen died, three of which were sold after both parents died. Daniel contends that proceeds of three of the properties belongs to him. We disagree.

b. 855 Victor Avenue, Inglewood

On February 2, 1981, Mr. Drommerhausen bought a one-half interest in the property located at 855 Victor Avenue in Inglewood from Mitsuhiro and Jean Shimotsu for $8,872.19. The interest was subject to a loan from the Shimotsus who executed a grant deed conveying their interest to Daniel and Ms. Hutchings. The Shimotsus also executed a note secured by a trust deed with Mr. Drommerhausen as beneficiary of the trust. The agreement provided that the trust deed would not be recorded to avoid paying taxes. On February 8, 1987, a deed of trust was executed by the Shimotsus which named Mr. Drommerhausen as a beneficiary. In February 1988, the property was transferred by quitclaim deed from the Shimotsus to Mr. Drommerhausen, Ms. Drommerhausen, Daniel and, Ms. Hutchings, as tenants in common. Daniel testified that Mr. Drommerhausen

paid $10,000 to purchase this property. Ms. Hutchings did not recall the purchase of this property. She did not contribute any money to the purchase.

The referee ruled the Victor Avenue property belonged entirely to the trust. The referee found: "The trust describes the property as trust property. However, the deed from the Drommerhausens conveyed only an undivided 50% to the trust, and also conveyed undivided 25% interests directly to their two children, [Daniel] and [Ms. Hutchings]. [Ms. Hutchings] testified that no such transfer occurred in 1995. [Daniel] did not report any interest in the property in his 1996 Marital Settlement Agreement. There is no evidence that [Daniel] or [Ms. Hutchings] shared in the income or expenses of this property during the lifetimes of their parents, or reported any transactions on their individual tax returns. The weight of the evidence therefore causes the Referee to conclude that this property was never treated by any of the Drommerhausens as anything other than trust property. If the senior Drommerhausens intended a gift of property interests in 1995, they never completed the gifts. Rather it appears that [Mr. Drommerhausen] intended only to create a paper record that would permit his children to claim property interests that avoided estate and transfer taxes, but which were without economic substance." These findings are supported by substantial evidence.

c. 15208 Eriel Avenue, Gardena

The trust took title of the property located at 15208 Eriel Avenue in Gardena by means of a quitclaim deed dated December 20, 1995, from "Daniel G. Drommerhausen, a married man." Daniel testified that he ran a title search on the property after his parents died. Until he ran a title search on the property and discovered the loans on the property, he believed the property belonged to the trust. Daniel believed that Mr. Drommerhausen was in error when the Eriel Avenue property was deeded to the trust.

There were five trust deeds encumbering the property recorded between November 1991 and November 1992. Daniel testified that he was the owner of the

property because he was the trustor on all five of the loans. According to Daniel, Mr. Drommerhausen erred in deeding the property to the trust in 1995. This was because Daniel actually owned the property. Daniel could not remember any details about the loans which were made to him using the property as security. One of the loans was in the amount of $21,500 from Mr. Taylor, a business associate of Mr. Drommerhausen. As noted, Mr. Taylor testified concerning Mr. Drommerhausen's wish that a substantial amount of the family real estate holdings be given to Daniel. At the time the loans were made, Mr. Drommerhausen was involved in litigation with a Tae Soon Lee over the Eriel Avenue property.

Mr. Taylor reconveyed the Eriel Avenue property to Daniel on February 3, 2004, without any consideration and without any repayment of the loan. Another loan was from Grant Funding Co., a fictitious business entity of Mr. Drommerhausen and one of his business associates, Ms. Clarke, in the amount of $61,200. Ms. Clarke, on behalf of Grant Funding Co., reassigned the property to ADCO in May 2004 without any consideration. Trust deeds were recorded with ADCO as beneficiary on February 7, 1992, for a loan in the amount of $6,222 and on May 8, 1992, in the amount of $3,635.

As noted, ADCO was a fictitious business name utilized by Mr. Drommerhausen. Daniel testified, however, that ADCO was a partnership. The two partners were Mr. Drommerhausen and Daniel. There was an April 13, 1992 trust deed securing a $6,546 loan and a November 10, 1992 trust deed securing an $11,650 loan from Hermosa Funding Group, a fictitious business name of Mr. Drommerhausen and Ms. Wright. Daniel did not recall the specifics of either of these transactions including receiving the funds from the loans made to him or repaying them.

The referee found that the property belonged to the trust. The referee ruled: "[Daniel] apparently argues that he must have been the owner of the property in 1991 because only the owner can encumber a property with a deed of trust. There are several difficulties with this position. As is the case with other properties now claimed to have been owed by [Daniel] prior to 1996, it is difficult to give credence to [Daniel's]

testimony when he presents only his own self-serving testimony, and when he did not include the property on his Schedule of Separate Property in his 1996 Marital Settlement Agreement, and when he can remember no details about transactions that would be expected to have been memorable." The referee found: the chain of title was clear and did not include Daniel; the chain of title was in Mr. Drommerhausen; and the trust deeds executed by Mr. Drommerhausen, as a non-owner, were a legal nullity. Substantial evidence supports the referee's findings.

d. 1019 East Spicer Street, Carson

The property located at 1019 East Spicer Street in Carson was transferred to "Daniel G. Drommerhausen" by grant deed dated July 22, 1967. "Daniel G. Drommerhausen" transferred the property to the trust by grant deed on December 20, 1995. The Drommerhausen family address—5595 West 63rd Street—is printed on a second trust deed. A letter dated October 27, 1967 from M. Jean Cochran was sent to "D. G. Drommerhausen" demanding payment on the loan balance. This letter related a telephone conversation had occurred between Ms. Cochran and a "Mr. Drommerhausen." Daniel was not in Los Angeles at that time. A 2002 property tax bill was addressed to Mr. Drommerhausen and Ms. Drommerhausen.

Daniel testified that he acquired the property in 1967 while he was stationed at Fort Lewis, Washington. He acquired the property but did not remember any details. Further, Daniel asserted the Spicer Street property was transferred to him in 1992 based upon a handwritten note dated November 15, 1992. The handwritten note was written by Mr. Drommerhausen. Daniel's interrogatory response claimed the property was to be conveyed to him for his services to his parents. In 1980, he received a letter from the City of Carson about a wall on the property. Daniel claimed the Spicer Street property on his income taxes since before his parents' death. A 2004 tax bill was sent to Daniel's home.

The referee noted that Daniel presented a number of inconsistent claims to this property: acquisition in 1967 when he was approximately 22 years old; a gift to him in 1992; and as part of property outside the trust promised to him for services rendered to the family business. The referee further found: the Spicer Street property was conveyed to the trust by legal description in 1995 but was never transferred to Daniel; the property tax bill for 2002 was addressed to the parents' residence; and there was no evidence that Daniel, rather than the parents, paid expenses or enjoyed rents and profits while they were alive. Also, the referee ruled: the property tax bill addressed to Daniel's home address is dated 2003, after Mr. Drommerhausen died; Daniel's signature on the lease agreement in 2000 was done after he was managing more of the family business; the lease provides that it could be signed by a manager rather than the owner; and Daniel did not list the property in his 1996 marital settlement agreement. The referee's findings based on conflicting substantial evidence must be upheld.

H. Brokerage And Bank Accounts

1. Business accounts: Hermosa Funding and ADCO Investment

The parties disputed ownership of several accounts which were owned by businesses. Daniel claimed ownership of the accounts because he owned the businesses. Also, Daniel testified he is an authorized signatory on some or all of the accounts.

Daniel testified that EastWest Bank Account No. 00-03374391 was used by Mr. Drommerhausen for the Hermosa Funding business. The account was in the names of "Daniel G. Drommerhausen" and Ms. Drommershausen doing business as Hermosa Funding. Daniel testified that he was "involved" in Hermosa Funding and a signatory on this account. He did not recall whether he had the statements changed to his address after

his parents died. According to Daniel, he probably did change the address so that he would make sure to get the year-end 1099 interest reporting statement.

Preferred Bank Account No. 3000907 and certificate Nos. 302652 and 302653 were in the name of Daniel G. Drommerhausen "aft" Hermosa Funding. Preferred Bank Account Nos. 300893, 302564 and 3800458 were in the name of Daniel G. Drommerhausen "aft" ADCO Investment. Daniel testified that he was the principal of ADCO and a signatory on the accounts.

The referee found: "As to these accounts, [Daniel] apparently claims them because . . . he is an authorized signatory on some or all of these accounts. These accounts apparently were used in connection with the property interests held in the respective fictitious names. . . . [Daniel] introduced evidence of oral statements made by his father and mother to the effect that the business properties either had been transferred to [Daniel] or would pass to him upon the deaths of his parents. [¶] However, the fact that these accounts were held in the name of Daniel G. Drommerhausen who did business as either Hermosa Funding or ADCO Investment Co. demonstrates that [Mr. Drommerhausen] had not transferred his interest in these ventures during his lifetime. He kept his name on the accounts, and, from all the testimony on the subject, remained active in the affairs of the business until almost the very end. Indeed, the bank branch manager called by [Daniel] testified that the Wells Fargo account opened in the name of ADCO Investment Co. in the early 2000's was opened by [Mr. Drommerhausen] and [Ms. Drommerhausen]. The mere fact that [Daniel] may have had signature authority on one or more business bank accounts does not demonstrate ownership. Managers commonly have signature authority on a business bank account. Therefore, at the time of the death of [Mr. Drommerhausen], these accounts were his property. [¶] . . . [W]hatever intent [Mr. Drommerhausen] or [Ms. Drommerhausen] may have had for the succession of these accounts after their deaths, these clear wills govern the passage of property, real and personal, held at their deaths." The referee's findings that these business accounts belong to the estates are supported by substantial evidence.

2. Citibank Accounts

On October 7, 2003, Daniel took $26,062.42 from Citibank Account No. 3774003754. Daniel conceded that this account was in the names of Mr. Drommerhausen and Ms. Drommerhausen and belonged to the estates. Although he could not document the transfer of funds, he testified that he used part of the proceeds from the account to pay off a loan on 855 Victor Avenue. He also testified that he gave half the proceeds of the account to Ms. Hutchings. However, Daniel opened a Citibank Account No. 400018541090 in the name of Daniel G. Drommershausen III, payable on death to Patricia Lynn Morgan, with a deposit $26,062.42. The referee's determination that the funds belonged to the estates is supported by the evidence.

3. OneUnited Bank

OneUnited Bank was formerly known as Family Savings Bank, where the Drommerhausen family real estate business had their general business account. The names on Family Savings Bank Account No. 114066921 were D. G. Drommerhausen, Ms. Drommerhausen, D. Drommerhausen, and Daniel G. Drommerhausen, III. Daniel testified that he was on the account because he used the money for the family real estate business. This account contained over $900,000. His parents never discussed that they wanted this account to go to him. According to Daniel, they never had any discussion because he was a signatory on the accounts and as "the last man standing," they belonged to him. At his deposition, Daniel testified that he and his parents had discussed placing Ms. Hutchings on the account but it would be "too inconvenient" because there were a

large amount of automatic payments coming from the account. The account would have to be closed and all the new automatic payment schedules recreated.

Daniel claimed he is an owner of the account by right of survivorship pursuant to section 5302, subdivision (a) which provides in part, "Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties as against the estate of the decedent unless there is clear and convincing evidence of a different intent." This is not a conclusive presumption that Daniel was entitled to the proceeds of any joint accounts on which he was a signatory. As noted, the presumption may be overcome by clear and convincing evidence showing an intent that a joint signatory was not to receive the remaining proceedings. Moreover, even if the presumption did apply to establish title, the issue of whether their parents intended that Daniel merely held legal title in trust for his sister Ms. Hutchings was subject to proof at trial. (*Estate of Fisher* (1988) 198 Cal.App.3d 418, 428; *Jarkieh v. Badagliacco* (1946) 75 Cal.App.2d 505, 510, disapproved on a different ground in *Tenzer v. Superscope, Inc.* (1985) 39 Cal.3d 18, 30.) As *Jarkieh v. Badagliacco, supra*, 75 Cal.App.2d at page 510 explained: "[T]he surviving joint tenant only takes *title* to the account. There is nothing in the wording of [the statute] that precludes a holding in a proper case, regardless of fraud or undue influence, the surviving joint tenant holds that legal title in trust for another. In such a case the conclusive presumption contained in the section is not being disturbed. Title goes to the survivor but evidence is admissible to show that the survivor holds such title subject to the terms of a trust." (Orig. italics; accord, *Estate of Fisher*, *supra*, 198 Cal.App.3d at p. 428.)

The referee found there was clear and convincing evidence that the parents did not intend have this account pass to Daniel on their deaths. The referee noted: this was a business account; as Mr. Drommerhausen became older he was less able to handle his business affairs; Daniel became more responsible for business affairs; the evidence established that the parents intended to add Ms. Hutchings to the account but never got around to it; and Ms. Hutchings testified that her parents stated numerous times that their

two children would share equally. Further, Daniel admitted that his parents wanted Ms. Hutchings's name placed on this account. Based on these factors as well as the size of the account, the referee rejected Daniel's claim that his name on the account meant that he had the right of survivorship. The foregoing constitutes substantial evidence the account did not belong solely to Daniel.

I. The Equitable Estoppel Claims

Daniel claims his parents promised to give to him, as a reward and payment for a lifetime of hard labor in the their real estate business, 13 properties which were not listed in the trust. Daniel testified his parents intended that any property not in the trust belong to him. He was generous and offered to benefit his sister but changed his mind after the litigation began. He claimed ownership of 13 real properties on the basis of promises by his parents. The real properties are located at: 21332 Archibald Avenue, Carson; 22726 Menlo Avenue, Torrance; 21602 Berendo Avenue, Torrance; 431 West 234th Street, Carson; 153 West 234th Street, Carson; 23403 West Moneta, Carson; 20849 Margaret Street, Carson; 1047 West 184th Street, Los Angeles; 276 West 235th Street, Carson; Lot 820, Tract 3061, Kern County; 272 West 235th Street, Carson; 22016 Bonita Street, Carson; and 22523 Ravenna Avenue, Carson.

A contract to make a particular testamentary disposition is valid and enforceable. (§ 21700; *Redke v. Silvertrust* (1971) 6 Cal.3d 94, 100; *Estate of Watson* (1986) 177 Cal.App.3d 569, 573.) The equitable estoppel doctrine may be asserted to enforce an oral agreement to make a will under two circumstances. First, if the promisee detrimentally relied on the agreement and would suffer an unconscionable injury if the oral agreement were not enforced, then the promise to make a will may be enforceable. Second, such an oral agreement may also be enforced if the promisor would be unjustly enriched by receiving the benefit of the promisee's performance. (*Day v. Greene* (1963) 59 Cal.2d 404, 409-410; *Estate of Housley* (1997) 56 Cal.App.4th 342, 351, 359; *Di Salvo v. Bank*

of America (1969) 274 Cal.App.2d 351, 354-355.) Daniel had the burden to prove his equitable estoppel contentions. (*Di Salvo v. Bank of America, supra,* 274 Cal.App.2d at p. 356; see also *Mills v. Forestex Co., supra,* 108 Cal.App.4th at p. 641 [party relying on equitable estoppel has the burden of proof]; *Ringler Associates, Inc. v. Maryland Casualty Co., supra,* 80 Cal.App.4th at pp. 1190-1191, fn. 14 [same]; *McKelvey v. Boeing North American, Inc., supra,* 74 Cal.App.4th at p. 160 [same].) The finding that the evidence did not support Daniel's equitable estoppel contentions is reviewed for substantial evidence. (*Carr v. Barnabey's Hotel Corp.* (1994) 23 Cal.App.4th 14, 22; *Cuadros v. Superior Court* (1992) 6 Cal.App.4th 671, 675; *Brookview Condominium Owners' Assn. v. Heltzer Enterprises-Brookview* (1990) 218 Cal.App.3d 502, 510-511.)

The referee found there was no enforceable promise to leave the properties to Daniel. In reaching this conclusion, the referee noted, among other things: the evidence is undisputed that Daniel worked extensively and intensively for decades on the family real estate business; the properties mostly in low-income areas required intensive and time-consuming efforts; Daniel was in charge of physical maintenance and repair of the properties; Daniel received $48,000 a year to maintain the properties; and Ms. Hutchings played virtually no role in the family business. The referee rejected Daniel's claims that he worked for $48,000 a year in exchange for a promise that he would receive all properties outside the trust.

The referee further found Mr. Drommerhausen often told people that he intended the properties to be held for the common good of the entire family. In that respect, Mr. Drommerhausen, for whatever reasons, saw nothing inconsistent about having record title in another's name and holding the properties for the common good. As with the other properties held by Mr. Drommerhausen, there was evidence of numerous deeds in the chain of title which transferred title back and forth between Mr. Drommerhausen and his family, friends, and business associates. For example, in the chain of title for the 22523 Ravenna Avenue, Carson property, there are a number of transactions. Exhibit No. 213 is a grant deed from Dorothy and David Kestlers to Daniel dated February 3, 1975.

Exhibit No. 214 is a quitclaim deed from Daniel dated April 22, 1975, to the Kestlers. Exhibit No. 32 is a quitclaim deed from the Kestlers to Mr. Drommerhausen dated May 21, 1975. Exhibit No. 215 is a grant deed from Daniel to Mr. Drommerhausen dated May 21, 1975. Exhibit No. 216 is a trust deed dated May 22, 1975 from Mr. Drommerhausen to the Kestlers. Exhibit No. 217 is a trust deed assignment from the Kestlers to Ms. Hutchings. Ms. Hutchings had never seen the trust deed assignment from the Kestlers to her before the litigation.

The referee also found: "To the extent that [Mr. Drommerhausen] and [Ms. Drommerhausen] expressed a future intent to leave the properties to [Daniel], [Daniel's] claim faces insurmountable obstacles. Such intent was simply never effectuated. They each executed a will and a trust instrument providing ultimately for the distribution of the properties to both children. There has been no evidence that suggested any reason why [Mr. Drommerhausen] and [Ms. Drommerhausen] did not revise their estate plan if it did not reflect their intentions. The documents are not complex or written in incomprehensible legalese. The wills plainly provide that the great bulk of properties not already within the trust would be transferred to the trust, and the trust clearly provided beneficial interests to both the Drommerhausen children. The senior Drommerhausens did revise the trust in 1996, at [Ms. Drommerhausen's] request, to make explicit that [Ms. Hutchings's] husband, David Hutchings, was not to take under the instrument. If she or [Mr. Drommerhausen] did not want [Ms. Hutchings] to take properties outside the trust, it would have been quite a simple task to have one of their lawyers revise the instruments. If they intended a different disposition and never amended their estate planning documents, the duly executed documents determine the disposition of the properties."

In addition, as the referee pointed out, Mr. Drommerhausen was very sophisticated in real estate transactions. No doubt, Mr. Drommerhausen may have said things to people about Daniel's interests in the properties. But Mr. Drommerhausen knew that he had executed estate planning documents transferring interests to both of his children. Given the 1992 handwritten note as well as evidence of his aversion to paying taxes, we

find no basis for setting aside the referee's conclusions that Mr. Drommerhausen's real intent was to avoid probate and taxes and not to create a different disposition from the executed testamentary documents.

J. Property Held By ADCO

Daniel argues the referee incorrectly ruled that the estates owned properties located at 8135 Christian Avenue and 1122 Westmont in San Pedro which is held in the name of ADCO. The evidence was conflicting on the issue of the nature and ownership of ADCO. Daniel's contention was that ADCO was a partnership or, alternatively, he was the sole owner of ADCO as of 1998 when he renewed the fictitious business name statement. A partnership is an association of two or more persons to carry on business as co-owners. (Corp. Code, § 16202, subd. (a); *Chambers v. Kay* (2002) 29 Cal.4th 142, 150-151.) Whether a partnership was formed is question of fact. (*In re Marriage of Geraci* (2006) 144 Cal.App.4th 1278, 1293, fn. 23; *Holmes v. Lerner* (1999) 74 Cal.App.4th 442, 453-454; *Billups .v Tiernan* (1970) 11 Cal.App.3d 372, 379.) A finding that no partnership was formed will be upheld on appeal if supported by substantial evidence. (*Hinton v. Welch* (1918) 179 Cal. 463, 464-465; *Matson v. Jones* (1969) 272 Cal.App.2d 826, 830; *Sandberg v. Jacobson* (1967) 253 Cal.App.2d 663, 669-670; *Rivlin v. Levine* (1961) 195 Cal.App.2d 13, 23-24.)

Daniel testified that ADCO is a real estate development and lending company, which was started by Mr. Drommerhausen in the 1960's. Daniel was "involved" in ADCO after he left the military in 1969. With the blessing of Mr. Drommerhausen, Daniel took over ADCO entirely in 1998 after the business license had lapsed. Mr. Drommerhausen discussed ADCO with Daniel. During that conversation, Daniel was told that ADCO belonged to him and to go out and make money with it. Daniel also presented testimony from Mr. Taylor and others that they considered ADCO to be a father and son business. By contrast, Ms. Taylor testified Mr. Drommerhausen opened

an account in the name of ADCO in December 1998 or January 1999. Mr. Drommerhausen and Ms. Drommerhausen were the only two persons with signatory authority on the account. Daniel's name was placed on an ADCO account at Wells Fargo Bank after Mr. Drommerhausen died. The account was placed in Daniel's name with Ms. Drommerhausen's consent. Ms. Hutchings's name was also added to the ADCO Wells Fargo account after Mr. Drommerhausen died. Because the referee's conclusion that this no partnership was ever formed between Mr. Drommerhausen and Daniel was supported by substantial evidence, we cannot disturb the finding. (*Sandberg v. Jacobson, supra,* 253 Cal.App.2d at pp. 669-670; *Rivlin v. Levine, supra,* 195 Cal.App.2d at pp. 23-24.)

Likewise, this evidence established that the referee's finding that the estate and not Daniel owned the property must be upheld. As note above, Daniel claimed that ADCO was a partnership or he owned it outright in 1998 after renewing the fictitious business name license. However, the evidence also shows that ADCO's accounts remained in the name of Mr. Drommerhausen until his death in January 2003. Daniel's name was not added to the account until after Mr. Drommerhausen died. Further, Daniel's name was added to the ADCO account with Ms. Drommerhausen's consent. The referee's conclusion that the estates owned the property held in ADCO's name is supported by substantial evidence.

K. Prejudgment Interest

Daniel claims it was error to award prejudgment interest against him as this is an equitable proceeding. The referee found that Daniel, while acting as trustee, sold trust property and retained the proceeds as his own or commingled the funds with his own. Under these circumstances, the trial court could impose an interest award. Section 16440, subdivision (a)(1) states: "If the trustee commits a breach of trust, the trustee is chargeable with any of the following that is appropriate under the circumstances: [¶] (1)

Any loss or depreciation in value of the trust estate resulting from the breach of trust, with interest." Section 16441, subdivision (a) states: "(a) If the trustee is liable for interest pursuant to Section 16440, the trustee is liable for the greater of the following amounts: [¶] (1) The amount of interest that accrues at the legal rate on judgments in effect during the period when the interest accrued. [¶] (2) The amount of interest actually received." Under these circumstances, the trial court could award prejudgment interest. (*Baker v. Pratt* (1986) 176 Cal.App.3d 370, 383-384; *Douglas v. Westfall* (1952) 113 Cal.App.2d 107, 112-113; *Katz v. Enos* (1945) 68 Cal.App.2d 266, 278-279.)

IV. DISPOSITION

The probate orders are affirmed. Debra Hutchings, in her capacity as trustee of the Drommerhausen Family Trust u/d/t dated December 20, 1995 and as the executor of the estates of Marjorie M. Drommerhausen and Daniel G. Drommerhausen II is awarded her costs on appeal, from Daniel G. Drommerhausen III.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

TURNER, P. J.

We concur:

ARMSTRONG, J. KRIEGLER, J.