

Court Held That A Trustee Made An Appearance In A Case And Was Bound By The Judgment

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In *Covenant Clearinghouse, LLC v. Kush & Krishna LLC*, there was a prior judgment that the plaintiff did not owe the defendant a transfer fee. No. 14-23-00092-CV, 2024 Tex. App. LEXIS 2793 (Tex. App.—Houston [14th Dist.] April 23, 2024, no pet.). The defendant filed a second suit under a bill of review proceeding, alleging that it was never a party to the first suit in its capacity as trustee and that the first judgment should be voided. The court of appeals discussed the law regarding a trustee making an appearance in a case:

“[A] party enters a general appearance when it (1) invokes the judgment of the court on any question other than the court’s jurisdiction, (2) recognizes by its acts that an action is properly pending, or (3) seeks affirmative action from the court.” A party acting in an official or representative capacity is, in law, a distinctly separate individual from the same party acting as an individual. Thus, a trustee must properly be brought before the trial court for relief to be ordered against a trust. However, a trustee who generally appears before the trial court may subject the trust to liability. This is so because a party’s general appearance in a suit disposes of the need for service of process, having “the same force and effect as if the citation had been duly issued and served as provided by law.”

Id. The defendant was sued in the first suit without any designation of its capacity. It filed an answer and did not object to the capacity in which it was sued. The defendant, however, could only participate in its capacity as a trustee. The court noted:

It is undisputed that, in the First Action, CCH would have been entitled to the private transfer fee, if at all, only in its capacity as trustee. In its answer in that lawsuit, CCH sought an award of the private transfer fee and interest on the fee.⁴ Moreover, CCH filed a motion for summary judgment, in which it: (1) stated that it is the trustee under the Declaration creating the transfer fee; (2) stated that Kush “now disputes owing [CCH] \$36,000.00 as a Private Transfer Fee”; (3) argued that it was not required to file a notice under Property Code section 5.203; (4) stated that it filed a correction affidavit under Property Code section 5.027, which resulted in it being owed the private transfer fee at issue;⁵ (5) sought the \$36,000 private transfer fee plus interest, as pleaded in its answer; and (6) sought attorney’s fees.

Id. The court held that this was sufficient for the defendant to make an appearance as a trustee and affirmed the trial court judgment denying the defendant's bill of review.

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