Forfeiture Introduction

The forfeiture cause is nothing more than an ordinary, "garden variety" no-contest or *in terrorem* clause, which states that anyone who contests the scheme or plan outlined in the document it is intended to control, will forfeit any rights, benefits and ownership interests. It is often used in wills and trusts. The Kneubuhls wrote a forfeiture clause into their 1982 Settlement Agreement which resolved, among other matters, the contest over Lena's will in her probate proceeding. A lengthy discussion can be found here and supporting law can be found here.

There are two views of a forfeiture clause: one provides that the moment a beneficiary files a court action, anywhere, of any kind, forfeiture springs and all is lost to that litigant. This is the Hall view, set forth at length here and in his trial memo. The second (plaintiffs') view is that the Kneubuhl forfeiture clause is unexceptional, but very specific, and intended to preserve specific legal claims, making these claims and certain documents incontestable.

Any forfeiture clause interpreted as Hall recommends would completely divest beneficiaries and heirs of both rights and duties they have under the document, under the various laws which promote and guarantee access to courts, and would strip them of the right to seek declaratory judgment.

The High Court of American Samoa has been very clear that not only do the Kneubuhl beneficiaries have both standing and rights it has stated that it is an heir's affirmative duty to come forth, not to "sit on their hands" or leave their rights in repose. Hall is strictly correct that inaction by failure to complain may result in loss of rights or assets by operation of laches and waiver or acquiescence, but none of these arises from any forfeiture clause. Instead, they are a matter of both statutory and common law, especially in American Samoa.

Forfeiture clauses seek to promote acceptance of the understandings in contracts, agreements, understandings other documents which bind parties as signatories or recipients. The Kneubuhl forfeiture clause is especially troublesome in the Hall theory because, if nothing else, everyone has consistently ignored it from the moment of signing.

This implicates the doctrine of estoppel, whereby, put simply, one cannot have it both ways: Only two examples are given here:

What recourse would one have if, under a trust, the Trustee enriched himself unjustly? Could one not sue the trustee for breach of fiduciary duty? What if the terms of one documents conflicted with the terms of another, or worse, if both were wholly ambiguous and in need of clarification? By declaratory judgment obtained only in a court of law?

Every jurisdiction has taken a position on this, usually beginning with the legal meaning of the word "contest." (see forfeiture law here) This permits a beneficiary, heir or other claimant to seek clarification in a court usuallyby declaratory judgment, in which proceeding a court will determine

whether or not his protest or claim merely seeks correction or factual amplification, or really is a fundamental disagreement with the decisions of a trustor or donor.

The Kneubuhl forfeiture clause is not at all complex. It also deserves scrutiny under the Canons of Construction, especially since all contracts must be construed *against the drafter,* in this case Roy Hall himself.