Get Your Business Dispute Out of My TEDRA

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On occasion, parties will attempt to bring what is at its essence a business dispute as a matter under the Trust and Estate Dispute Resolution Act ("TEDRA"), typically where one of the parties to the underlying transaction in dispute is a trust. If this decision is intentional and not merely based on a misunderstanding of the scope of TEDRA, there are usually two primary reasons why they do so: either because they want a quick and streamlined resolution and, rightfully so, believe TEDRA can yield quicker results than an ordinary civil action — or — they believe they can get a fee award, pursuant to RCW 11.96A.150, which relief is not otherwise available to them.[1]

If the case truly is a business dispute where one party happens to be a trust, TEDRA is not the appropriate vehicle. In order to properly be subject to TEDRA, a dispute should fall within one of the eight categories of "matters" outlined in TEDRA. RCW 11.96A.030(2)(a)-(h). The term "matter" is intentional in the statute and should not be disregarded. "It is an axiom of statutory interpretation that where a term is defined we will use that definition." *United States v. Hoffman*, 154 Wn.2d 730, 741, 116 P.3d 999 (2005). A review of the definitions under TEDRA, and in particular "party" and "matter" usually results in a finding that a business dispute, even where a trust is a party to the underlying transaction, does not qualify.

For example, applying these statutory definitions, a dispute over the sale of real estate or of a business where either the buyer or seller is a trust usually will not qualify as a TEDRA action. On the other hand, if the beneficiaries of a trust wish to sue their trustee over the transaction, for example, alleging breach of fiduciary duty for paying too much for the asset(s), then that type of action — provided it solely names the trustee as the respondent and does not seek to include the seller — would likely fall within TEDRA. RCW 11.96A.030(2)(c) ("The determination of any question arising in the administration of an estate or trust …").

Indeed, TEDRA is not unlimited in scope and does not extend to transactions merely because a trust or estate is involved. *In re 1934 Deed to Camp Kilworth*, 149 Wn. App. 82, 87, 201 P.3d 416 (2009) (declining to apply TEDRA to allow an equitable reformation of a deed conveyed during a grantor's lifetime); *Sloans v. Berry*, 189 Wn. App. 368, 375, 358 P.3d 426 (2015) (holding niece was not a party entitled to a judicial proceeding under TEDRA, and should instead have brought her creditor claim as an ordinary civil action).

TEDRA was "intended to … provide flexibility to the court in resolving *simple* estate and trust matters expeditiously." *Sloans*, 189 Wn. App. at 374 (emphasis added). Consistent with that goal, TEDRA has provisions regarding mediation and arbitration (RCW 11.96A.300, .310), initial hearings on the merits to resolve all issues of fact and law (RCW 11.96A.100(8)), limitations on discovery (RCW 11.96A.115), and testimony by affidavit (RCW 11.96A.100(7)). In contrast, civil actions are governed by the civil rules, including (currently) a 12-month-long case schedule, full discovery, dispositive motion practice, and a right to trial by jury.

In King County, for example, if the "initial hearing" is not on the merits (RCW 11.96A.100(10)), and does not result in a resolution of all the issues raised in the petition, often the ex parte commissioners will assign the matter to a trial in 90 days, and the clerk of the court will issue a "trial only" case schedule. Depending on the nature of the dispute and the amount in controversy, 90 days may not be enough time to conduct discovery and otherwise prepare for a trial on the merits. Currently, upon filing an ordinary civil action, the clerk of the court is issuing 12-month trial calendars in King County. While parties can request the Commissioner issue an order that the clerk issue a 12-month case schedule, it is not the usual or default order entered at the initial TEDRA hearing, and it can be a substantial disadvantage to a respondent/defendant to have only three months to prepare for trial. *See* King County Local Rule 40.1(b)(2)(D), which specifies that matters in the ex parte department that are contested "may be referred by the judicial officer to the Clerk who will issue a trial date and will assign the case to a judge." Similarly, Local Rule 98.14(b) specifies that "[i]f a need for an extended hearing arises, the matter will be certified for trial. The Clerk's Office will issue a judicial assignment and trial date." Typically, even if you are successful in obtaining a twelve-month schedule at the initial TEDRA hearing, it will be "trial only" and you will need to move the assigned trial judge for a full case schedule akin to the ones issued for ordinary civil actions.

When one does find him-/or herself in a situation where a court has determined that the parties are properly proceeding under TEDRA for a business dispute, it is entirely possible to conduct the TEDRA action, for all intents and purposes, like a regular civil action with full discovery and a 12-month trial calendar. Parties proceeding under TEDRA still need to follow the civil rules. The "procedural rules of court apply to judicial proceedings under [TEDRA] to the extent that they are consistent" with TEDRA. RCW 11.96A.090(4). It is also entirely reasonable to request the assigned trial judge issue a regular case schedule. For example, King County LR 4 includes a case schedule that includes many important pretrial deadlines that you will want included in a case schedule whether you are proceeding under TEDRA or as a regular civil action, including without limitation: disclosure of primary (and later additional) witnesses, discovery[2] cut-off, a deadline for engaging in alternative dispute resolution, an exchange of witness and exhibit lists, for hearing dispositive motions,

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Recent Developments

Real Property

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Implied Easements. *Robert Boyd et al. v. Sunflower Properties, LLC*, 197 Wn. App. 137 (2016).

In *Boyd v. Sunflower Props. LLC*, 197 Wn. App. 137 (2016), Division I of the Court of Appeals affirmed summary judgment in favor of the respondents and denied the appellant's claim to an implied easement road over the respondents' property where the appellant could not prove prior and continuous use or the reasonable necessity of the road. In doing so, the court upheld the longstanding common law elements of implied easements. The court also denied respondent's motion for an award of attorneys' fees, holding that the claim was equitable and not based on the purchase and sale contract.

In 2001, Sunflower Properties, LLC ("Sunflower") purchased from the same owner half of lot 3 and lots 4 through 8 of platted land plus an unplatted triangular parcel of land to the north of the lots. Geer Lane, an access and utility easement, curved around the southern and northern borders of block 5, and followed the unplatted parcel to the north of lots 4 and 5. In 2002, Sunflower modified the boundary line of lot 3 to merge it with the unplatted parcel to the north. Sunflower advertised lots 4 and 5 for sale. Lots 4 and 5 were accessible by two ways: (1) southern Geer Lane, and (2) a gravel road that extended off the northern Geer Lane and ran through lot 3 that was formerly unplatted. The northern parts of lots 4 and 5 were level, while the rest of the lots sloped down to the southern Geer Lane. In the listing service agreement Sunflower described access to lots 4 and 5 as "on right towards the end of [Geer] Lane," while the posted advertisements described access as "driveway to property on right hand side" and "Gravel, Privately Maintained, Recorded Maint. Agrm."

Years later, in 2008, Robert Boyd and Margaret Weidner ("Boyd/Weidner") offered to purchase lots 4 and 5 if Sunflower modified the boundary line to include the area between the northern border of lots 4 and 5 and Geer Lane. Sunflower rejected this offer and instead the parties agreed to a more limited boundary line adjustment that neither extended lots 4 and 5 to Geer Lane nor included the northern gravel road. In neither the seller disclosure statements, nor during the negotiation or sale, did the parties expressly state whether Boyd/Weidner was permitted to access lots 4 and 5 via the gravel road that extended off of northern Geer Lane.

Boyd/Weidner commissioned a survey in 2011 when they wanted to develop their property. With respect to the northern gravel road, the survey noted that its use "appeared to be without benefit of easement rights." Boyd/Weidner rejected Sunflower's offer to purchase all of lot 3 so they could use the gravel road to access lots 4 and 5. Over emails, the parties disputed whether an easement over the gravel road was included in the sale of the property, and Sunflower held its position that an easement was neither granted nor implied in the sale.

A few years later, in 2015, Boyd/Weidner gave written notice to Sunflower and a neighbor that they would use the northern gravel road to access lots 4 and 5 and begin construction. Sunflower responded in a letter that the only legal access to lots 4 and 5 was by the southern Geer Lane, and not, as Boyd/Weidner claimed, by an easement over the gravel road granted at the sale. Boyd/Weidner sought a judgment in San Juan County Superior Court confirming an implied easement over the gravel road.

At the trial court, Sunflower's motion for summary judgment was granted and its motion for attorneys' fees was denied. The parties appealed.

The Court of Appeals upheld the lower court's grant of summary judgment because Boyd/Weidner did not present evidence of Sunflower's intent to convey an easement, nor could Boyd/Weidner establish that an easement was implied through prior use and reasonable necessity.

Easements may arise via an express grant or by operation of law. There are four ways an easement may arise out of operation of law: (1) prescriptive easements, (2) easements by estoppel, (3) easements of necessity, and (4) easements by implication.[1] This case involved an implied easement.

Implied easements, which, like easements by necessity, focus on the parties' intentions and can be evidenced by demonstrating common ownership, severance, and necessity, generally have three requirements: (1) unity of title and subsequent separation by grant of the dominant estate, (2) prior apparent and continuous quasi-easement for the benefit of one part of the estate to the detriment of

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submitting a joint statement of evidence, and a trial. Should the party, usually the respondent, be able to convince the court that a regular civil trial schedule should be issued, the only real substantive difference between the TEDRA action and an ordinary civil action will then be TEDRA's fee provision.

1 Recall that "Washington courts traditionally follow the American rule in not awarding attorney fees as costs absent a contract, statute, or recognized equitable exception. Rettkowski v. Department of Ecology, 128 Wn.2d 508, 514, 910 P.2d 462 *(1996)*.

2 Requiring the parties to follow the civil rules as they relate to interrogatories and requests for production of documents is consistent with TEDRA's discovery provision. RCW 11.96A.115 (" … discovery shall be conducted in accordance with the superior court civil rules and applicable local rules unless otherwise limited by the order of the court.").