

Daily Journal

FEBRUARY 21, 2024

TOP VERDICTS

THE LARGEST AND MOST SIGNIFICANT VERDICTS
AND APPELLATE REVERSALS IN CALIFORNIA IN 2023

In Re: Francesca P. Naify Living Trust (Cortese v. Sherwood et al.)

Over a 70-year career, movie theater tycoon Robert A. Naify amassed a multi-billion dollar fortune held in the trust of his deceased wife. When he died in 2016 at age 94, he left \$21 million to stepdaughter Christina Cortese — but she wanted much more.

The resulting litigation merged probate law with community property principles on Cortese’s claim for a \$680 million share in the estate. The result was rejection of the claims and a complete defense win for the estate. *In re: Trust of Francesca P. Naify; Cortese v. Sherwood et al.*, PTR-300479 (San Francisco Super. Ct., filed July 31, 2018).

The affirmative defenses raised by Bartko LLP’s Benjamin K. Riley and his team persuaded San Francisco Superior Court Judge Anne-Christine Massullo to rule that Cortese’s claims were barred and — following Riley’s exhaustive cross-examination of the claimant — that Cortese was not credible.

“This was a marathon with 93 hours of testimony over five weeks,” said Riley, who, with Sony B. Barbari and Robert H. Bunzel, won a Daily



BENJAMIN K. RILEY



ROBERT H. BUNZEL



SONY B. BARARI

Journal CLAY award for the win. “It was very interesting. I’ve never done one at the intersection of probate and community property like this.”

Riley said the case turned on his successful rejection of the plaintiff’s attempt to rigidly apply divorce and community property assumptions regarding which of Naify’s assets should be considered part of the trust. Riley argued that those standards could not be applied in-

flexibly, but instead had to reflect principles of probate law and be tempered by the unavailability of full records due to the passage of time.

“And based on my cross-examination, the judge clearly didn’t believe Christina,” Riley said. The judge wrote that Cortese was “not a credible witness” in her statement of decision after Riley showed that Cortese secretly made copies of confidential documents and denied to her stepfather that she expected

to inherit from him — a direct contradiction of claims she made in the litigation.

Riley also cross-examined Cortese’s damages expert and demonstrated multiple mistakes in her report, including one where she double-counted a \$2.3 million item. The judge then wrote of “several erroneous or unsupported items” in the expert’s work.

The Bartko team presented much of the voluminous trial evidence through visual summaries prepared by Barari. “We had pretty extensive documentation that we distilled down into digestible nuggets,” he said. “We built out a chart or graphic for each important asset. One went back to 1954. We showed that 99.9% of them were separate from the community property at issue. We were meticulous about that.”

The lead attorney for the plaintiff, Holland & Knight LLP partner Stacie P. Nelson, said the firm had no comment.

— JOHN ROEMER

CASE DETAILS	CASE NAME	In Re: Francesca P. Naify Living Trust (Cortese v. Sherwood et al.)
	TYPE OF CASE	Probate and community property
	COURT	San Francisco County Superior Court
	JUDGE(S)	Judge Anne-Christine Massullo
	PLAINTIFFS’ LAWYERS	Bartko LLP, Benjamin K. Riley, Robert H. Bunzel, Sony B. Barari
	DEFENSE LAWYERS	Holland & Knight LLP, Stacie P. Nelson, Yunnice Y. Son, and Jaime B. Herren