AFFIRM; and Opinion Filed April 26, 2018.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-16-01514-CV

PBL MULTI-STRATEGY FUND, L.P., CAMPBELL HARRISON & DAGLEY L.L.P., and CALLOWAY NORRIS BURDETTE & WEBER, PLLC, Appellants
V.
FIRST TENNESSEE BANK, AS TRUSTEE OF THE ALBERT G. HILL III 2010 GIFT TRUST F/B/O ALBERT G. HILL, IV THE ALBERT G. HILL III 2010 GIFT TRUST F/B/O NANCE H. HILL, AND THE ALBERT G. HILL III 2010 GIFT TRUST F/B/O CAROLINE M. HILL, Appellee

On Appeal from the 101st Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-16-09627

MEMORANDUM OPINION

Before Justices Lang, Fillmore, and Schenck
Opinion by Justice Schenck

PBL Multi-Strategy Fund, L.P. ("PBL"), Campbell Harrison & Dagley L.L.P. ("CHD"), and Calloway Norris Burdette & Weber, PLLC ("CNBW"), appeal the trial court's order granting summary judgment in favor of Bessemer Trust Company of Florida,[1] as Trustee of various trusts Albert G. Hill III created for the benefit of his children. PBL sued the Trustee in state court after the clerk of the United States District Court for the Northern District of Texas transferred funds from the registry of that court to the Trustee, pursuant to Federal Judge Sam Lindsay's disbursement order in a case involving Hill. CHD and CNBW (collectively the "Law Firms")

[1] Appellee First Tennessee Bank has since replaced Bessemer Trust Company of Florida as trustee. Bessemer Trust Company replaced the original trustee, Comerica Bank. Further references to the trustee of the Hill children's trusts will be to the "Trustee."

intervened in PBL's state court suit. PBL and the Law Firms claimed the Trustee fraudulently received the funds. The Trustee responded claiming PBL and the Law Firms' claims are barred by res judicata and collateral estoppel due to the prior federal court case. The Trustee filed a motion for summary judgment on these grounds, and the trial court granted the Trustee's motion.

In two issues, with sub-parts, PBL asserts the trial court erred in granting the Trustee summary judgment because (1) it was not a party to the prior federal court case, (2) the fraudulent transfer issue did not comprise a convenient trial unit conforming to the parties' expectations, precluding a finding its claims are barred by res judicata, (3) it did not have a full and fair opportunity to litigate the fraudulent transfer issue in the prior federal court case, precluding a finding its claims are barred by collateral estoppel, and (4) it was not named in the federal court's Final Judgment. In three issues, the Law Firms assert the trial court erred in granting the Trustee summary judgment because (1) their claims were not adjudicated in the federal court's Final Judgment, thus precluding a finding their claims are barred by collateral estoppel, (2) their fraudulent transfer claim did not exist before the funds were disbursed from the registry of the court, thus precluding a finding their claims are barred by res judicata, and (3) there are fact issues as to whether the transfer of funds was fraudulent. We affirm the trial court's judgment. Because all issues are settled in law, we issue this memorandum opinion. TEX. R. APP. P. 47.4.

FACTUAL AND PROCEDURAL BACKGROUND

The Law Firms represented Albert G. Hill III and his wife, individually and in representative capacities, in several lawsuits they brought against other family members and the trustees and advisory board members of family trusts for alleged wrongdoing in the management and administration of the trusts. One of those suits was removed from state court to federal court

on federal question jurisdiction (the "Federal Case"). Hill secured financing for the Federal Case from PBL.[2]

Hill terminated the Law Firms' representation on November 16, 2009, and, thereafter, in May 2010, settled the Federal Case and all of the related state court cases by way of a Global Settlement Agreement (the "Agreement"). One of the Agreement's provisions required Hill's father, Albert G. Hill, Jr., to pay into the registry of the federal court, for the benefit of Hill, roughly $30 million in four annual installments of $7.5 million each. In another provision, Hill irrevocably assigned his right to these installment payments to separate trusts that he would create for his children, the grandchildren of Albert G. Hill, Jr. (the "Grandchildren's Trusts").

The Law Firms intervened in the Federal Case on August 20, 2010, in an attempt to secure unpaid attorneys' fees. The Law Firms' claims and the claims of all other creditors of Hill were later severed into another federal case.[3] In March 2011, PBL filed a claim-in-intervention in the Federal Case asserting a claim for payment on the note and the guaranty that were executed to secure financing for the Federal Case. PBL was granted leave to intervene in the severed case. In January 2012, PBL and Hill entered into a settlement agreement resolving Hill's payment obligation and stipulated that the federal court would authorize payment of the agreed sum to PBL from the funds remaining in the registry of the court. Because there were not enough funds in the registry of the court to pay the agreed sum, the settlement fell apart and subsequently PBL obtained a summary judgment on its claim.

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[2] A limited liability company Hill created signed the note, and Hill personally guaranteed payment of the LLC's obligation under the note.

[3] The claims were severed pursuant to a Final Judgment dated November 8, 2010.

The Final Judgment provided, in part, "that until further Order of this Court, any future distributions to be made to [Hill] relating to his interest in the [Margaret Hunt Trust Estate 'MHTE'] or the MHTE-Albert G. Hill III Trust shall be paid to the registry of this Court for the benefit of [Hill] and subject to the claims in the above-referenced severed action [the attorney's fee claims] and shall be disbursed only upon further Order of this Court after resolution of the claims at issue in the above-referenced severed action."

The Final Judgment further provided, in part, "without affecting the finality of this Final Judgment, the Court hereby retains continuing jurisdiction over the implementation of the Agreement, the Final Judgment, and the Parties for purposes of implementing and enforcing the Agreement and this Final Judgment."

The Law Firms moved to compel arbitration pursuant to their fee agreements and proceeded to present their claims to an arbitrator. On November 13, 2012, the arbitrator awarded the Law Firms their fees, and the Law Firms obtained a final judgment confirming the award on June 3, 2015, after the United States Court of Appeals for the Fifth Circuit issued a mandate. On June 16, 2015, the Law Firms filed a Motion for Payment in the Federal Case seeking to satisfy the judgment using funds held in the registry of the court. The Law Firms urged the federal court to use all of the funds in the registry of the court, including the installment payments that were earmarked for the Grandchildren's Trusts, to satisfy Hill's obligations to them. Specifically, the Law Firms moved for payment "out of the registry funds held by the Court," asserting that their rights were "superior to all subsequent interests in the settlement" and that their lien "extends to the entire settlement fund received, including the entire amount in the registry." Numerous parties opposed the Law Firms' motion, including Hill, Albert G. Hill, Jr., and Hill's judgment creditors. PBL was among the creditors responding to the Law Firms' motion. PBL's response asserted it has a security interest in the funds that was perfected prior to the inception of the potentially competing claims, and postulated that its claim to the funds is superior to all other claims save those of CHD, to which PBL admitted it had subordinated its right to payment. PBL also stated:

> There are a number of competing claims to the funds (including both those in *custodia legis* and any funds held in trust outside *custodia legis*), including the claims of movants CHD and CNBW and the claim of PBL. The total amount of funds available to satisfy those claims is unknown. Before ordering the distribution of any funds the Court must determine the priorities among the competing claims to the funds. Once that is done, then the Court should order distribution of the funds in the order of priority.

PBL requested an order establishing PBL's place in line immediately behind CHD when the *custodia legis* funds are distributed, so that upon satisfaction of the CHD claim, PBL's claim would be paid next. PBL further joined in the request for distribution upon the resolution of all of the competing claims.

On January 15, 2016, the federal court entered a Memorandum Opinion and Order disposing of the Law Firms' Motion for Payment and disbursing the funds held in its registry (the "Federal Disbursement Order"). In the Federal Disbursement Order, the federal court ordered payment of a portion of the Law Firms' arbitral award and ordered payments to other creditors of Hill. After those distributions were made, there were no funds available for distribution to PBL. In reaching its disbursement decisions, the federal court rejected the Law Firms' arguments insofar as they asserted a claim to the funds earmarked for the Grandchildren's Trusts. In the Federal Distribution Order, Judge Lindsay indicated, "the court agrees with [Albert G. Hill,] Jr. and [Hill], and concludes that [Albert G. Hill,] Jr.'s Installment Payments held in the court's registry for the Grandchildren's Trusts . . . are not subject to CHD and CNBW's claims, or the claims of any other of [Hill's] creditors. The court rejects CHD and CNBW's arguments to the contrary. . . ." Thus, Judge Lindsay specifically considered and ruled on the payment issue and denied PBL and the Law Firms the payment they now seek by way of fraudulent transfer.[4]

In accordance with the Federal Disbursement Order, the clerk of the federal court transferred the trust funds from the court's registry to the "trustee(s) of the Grandchildren's Trusts." On August 10, 2016, PBL filed this suit in state court alleging that the Trustee fraudulently received the funds when it accepted the transfer from the registry of the United States District Court. More specifically, PBL alleges that the funds earmarked for the Grandchildren's Trusts are "collateral" for the note issued to Hill, and "because [PBL] was a creditor of Hill at the time of the transfer, the transfer is fraudulent and void."

The Law Firms filed a Petition in Intervention, also alleging that the transfer of funds out of the federal court's registry was fraudulent as to them because they had "a right to payment" out

[4] The Law Firms assert here that Judge Lindsay was merely interpreting the Global Settlement Agreement and that Hill's decision to divert settlement funds to the Grandchildren's Trusts to place them outside the reach of Hill's creditors was a fraud. The record before this Court fails to demonstrate that PBL and the Law Firms raised this concern in the Federal Court, where they clearly could have.

of the Grandchildren's Trusts as "a creditor [of Hill] whose claims arose before the transfer was made."

On October 12, 2016, the Trustee filed a motion for summary judgment on PBL and the Law Firms' claims, asserting the affirmative defenses of res judicata and collateral estoppel as grounds therefor because PBL and the Law Firms sought to re-litigate their right to payment from the funds earmarked for the Grandchildren's Trusts as creditors of Hill. The trial court granted the Trustee summary judgment without specifying the grounds therefor, and this appeal followed.

DISCUSSION

I. Standard of Review

We review the granting of a motion for summary judgment de novo. *Merriman v. XTO Energy, Inc.*, 407 S.W.3d 244, 248 (Tex. 2013). The standard of review in traditional summary-judgment cases is well established. *Gonzalez v. Vatr Constr.* LLC, 418 S.W.3d 777, 782 (Tex. App.—Dallas 2013, no pet.). The issue on appeal is whether the movant met its summary-judgment burden by establishing that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c). The movant bears the burden of proof and all doubts about the existence of a genuine issue of material fact are resolved against the movant. *Nixon v. Mr. Prop. Mgmt. Co.*, 690 S.W.2d 546, 548–49 (Tex. 1985). All evidence and any reasonable inferences must be viewed in the light most favorable to the nonmovant. *Id.* Evidence favoring the movant's position will not be considered unless it is not controverted. *Great Am. Reserve Ins. Co. v. San Antonio Plumbing Supply Co.*, 391 S.W.2d 41, 47 (Tex. 1965).

II. Applicable Law

Federal law applies to claim/issue preclusion where, as in the Federal Case, jurisdiction is founded on the existence of a federal question. *See Eagle Properties, Ltd. v. Scharbauer*, 807 S.W.2d 714, 718 (Tex. 1990) (citing *Aerojet-General Corp. v. Askew*, 511 F.2d 710, 715 (5th Cir.

1975) cert. denied, 423 U.S. 908 (1975)). Res judicata, also claim preclusion, "bars recovery when a party seeks to relitigate the same facts, even when the party argues a novel legal theory." *Snow Ingredients, Inc. v. SnoWizard, Inc.*, 833 F.3d 512, 522 (5th Cir. 2016). For the doctrine to apply, the following four-part test must be satisfied: (1) the parties to both actions are identical or in privity; (2) the judgment in the prior action was rendered by a court of competent jurisdiction; (3) the prior action concluded to a final judgment on the merits; and (4) the same claim or cause of action is involved in both actions. *U.S. v. Davenport*, 484 F.3d 321, 326 (5th Cir. 2007). As to the fourth element of a res judicata defense, federal courts apply the transactional test of the Restatement (Second) of Judgments to determine whether two suits involve the same claim. RESTATEMENT (SECOND) OF JUDGMENTS §24(1); *Southmark Properties v. Charles House Corp.*, 742 F.2d 862, 871 (5th Cir. 1984). Under that test, the preclusive effect of a prior judgment extends to all rights the party had "with respect to all or any part of the transaction, or series of connected transactions, out of which the [original] action arose." *Petro-Hunt, L.L.C. v. U.S.*, 365 F.3d 385, 395–96 (5th Cir. 2004). What factual grouping constitutes a "transaction," and what groupings constitute a "series," are to be determined pragmatically, giving weight to such considerations as whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage. *Id.* at 396. "[T]he critical issue is whether the two actions under consideration are based on the *same nucleus of operative facts*." *Id.*

Collateral estoppel, or issue preclusion, bars a suit when: (1) the issue at stake is identical in the prior and current litigation; (2) the issue was actually litigated in the prior litigation; and (3) the determination in the prior litigation was a critical and necessary part of the judgment. *Rabo Agrifinance, Inc. v. Terra XXI Ltd.*, 583 F.3d 348, 353 (5th Cir. 2009).

III. Application of the Law to the Facts

We address the res judicata ground for summary judgment first. PBL challenges the existence of the first and fourth elements of Hill's res judicata defense, urging it was not a party to the Federal Case, it was not named in the underlying judgment, and the fraudulent transfer issue did not comprise a convenient trial unit conforming to the parties' expectations. The Law Firms likewise challenge the first and fourth elements of Hill's res judicata defense, urging they did not bring, and could not have brought, their fraudulent transfer claims in the Federal Case because the transfer had not yet occurred, and they were not named in the Final Judgment.

A. Identity of Parties

PBL and the Law Firms contend their claims are not precluded by the Federal Case because they were not named in the Final Judgment. Whether PBL and Law Firms were named in the Final Judgment does not inform our decision here as to whether their participation in the Federal Case precludes their maintaining the instant suit. In entering the Final Judgment, the district court retained jurisdiction to order the distribution of funds held in the registry of the court until after the claims of the Law Firms, and the claims of other creditors of Hill's, were resolved. PBL and the Law Firms did not challenge the district court's jurisdiction to do so. In any event, the operative order here is the Federal Distribution Order, and not the Final Judgment itself. An order like the Federal Disbursement Order can have preclusive effect.[5] *See In re Paige*, 610 F.3d 865, 871 (5th Cir. 2010) (Memorandum Opinion and Order constituted a final judgment on the merits); *see also In re Williams*, 298 F.3d 458, 461-62 (5th Cir. 2002) (contempt order was a final judgment on the

[5] In the Federal Distribution Order, Judge Lindsay indicated, "[a]s the court has determined that the requirements of interpleader have been met, the court must now determine the rights of the various claimants." Citing *Fresh Am. Corp. v. Wal-Mart Stores, Inc.*, 393 F. Supp. 2d 411, 415 (N.D. Tex. 2005) (stating that once the court determines that the requirements of interpleader are met, "the next stage of the litigation is to determine the rights of the claimants.") (Lynn, J.). Judge Lindsay then addressed the judgment creditors' arguments in turn.

merits for res judicata purposes). Accordingly, that PBL and the Law Firms were not specifically named in the Final Judgment is of no import to the disposition of this appeal.

Next, PBL urges it was not a party to the Federal Case subject to the Federal Distribution Order, because the Federal Disbursement Order's reference to "claims of any other of [Hill's] creditors" was limited to creditors who had previously intervened in the Federal Case and were severed into the related case by virtue of the Final Judgment. PBL argues it was not in that class because it did not intervene until after the Final Judgment was entered and then did so in the severed case, not the Federal Case. But the Federal Distribution Order's reference to *any other* of Hill's creditors is not limited to creditors who had intervened in the Federal Case before the creditor claims were severed. Moreover, even if PBL's interpretation of the Federal Distribution Order is correct, the Federal Distribution Order is a judgment in rem and is binding on all concerned, including PBL, unless appealed. *Braun v. C.I.R.*, 29 B.T.A. 1161, 1176 (1934); *Pitman v. Commissioner of Internal Revenue*, 64 F.2d 740, 742 (10th Cir. 1933).

PBL also relies on this Court's decision in *Robert L. Crill, Inc. v. Bond* to argue there is a lack of identity of parties between this case and the Federal Case. *Crill*, 76 S.W.3d 411 (Tex. App.—Dallas 2001, no pet.). In *Crill,* Crill and other lawyers filed suit against attorney Bond seeking a declaration that he had no interest in any recovery of attorney's fees in what was referred to as the Greenery case. One of the theories advanced by Crill was that Bond's claim for a referral fee was barred by res judicata. The record in that case established Bond intervened in the Greenery case and attended the prove-up hearing on the settlement of that case to assert his one-third interest in the attorney's fees. At that hearing, Crill, Bond and others entered into an agreement on the record to place $100,000 in the trust account of one of the law firms until Bond's claim was "finally resolved either by court order, or fee dispute committee or agreement." Subsequently, the trial court entered a final judgment in the Greenery case that awarded attorney's fees without making

any reference to Bond or the parties' agreement. This Court concluded Bond's claim for a referral fee was not precluded because Crill had not established an identity of parties between the *Crill* case and the Greenery case. That case is distinguishable from this case in that the parties to *Crill* expressly agreed on the record that the attorney's claim would be resolved at a later date, not at the hearing at which Bond appeared, the parties placed the disputed funds in trust to be accessible once the dispute concerning Bond's entitlement to fees was resolved—not in the court's registry as is the case here—and Bond's claim to the fees was not resolved by the final judgment in the Greenery case, whereas PBL's claim to the funds was resolved in the Federal Distribution Order. Thus, *Crill* does not inform our decision here.

PBL further contends there is a lack of identity of parties because, in responding to the Law Firms' Motion for Payment, it was adverse to the Law Firms and not to Hill. The record shows otherwise. In the Federal Distribution Order, Judge Lindsay noted that both Hill and his father argued that the trust funds belong to the Grandchildren's Trusts, and "are not subject to the claims of Hill's creditors." The Federal Disbursement Order further indicates that a point in dispute was the extent, if any, the funds earmarked for the Grandchildren's Trusts that were being held in the registry of the court were subject to the Law Firms' claims or the claims of any other of Hill's creditors. Consequently, an "adverse relationship" existed between all "competing claims" to the registry funds, including the Grandchildren's Trusts' and PBL's, which are the parties involved here, the Grandchildren's Trusts' interest now being represented by the Trustee.

PBL also urges that by merely filing a response to the Law Firms' Motion for Payment it did not become a party to the Federal Case. We note that the Final Judgment severed the Law Firms' claims, along with all other claims of Hill's creditors into another federal case, and provided the funds in the registry of the court would be subject to the severed claims following their resolution and would be disbursed only upon further order of the court. Here, PBL was allowed

to intervene in the severed federal court case and participated in the disbursement of funds from the registry of the court by responding to the Law Firm's Motion for Payment and seeking distribution of whatever funds were available after the Law Firms were paid. The district court referred to PBL in its order as "intervenor and creditor" and concluded no funds were available for distribution to it. Moreover, and notwithstanding the in rem nature of the Federal Disbursement Order, the record before this Court affirmatively demonstrates PBL participated in the Federal Case, and thus will be considered to have been a "party" to that case for res judicata purposes. "Participation" in a proceeding will bind litigants to a judgment, whether they have "been explicitly named a party" or not. *See In re Paige*, 610 F.3d at 871. We overrule the Law Firms' first issue and PBL's first and second issues as to the identity of parties' element of the Trustee's res judicata defense.

B. Identity of Claims

PBL argues there is no nucleus of facts between the pre-settlement/judgment issues in the Federal Case and this case. As we have previously concluded, the operative document is the Federal Distribution Order, and therefore PBL's focus on the pre-settlement issues is misplaced.

PBL further urges that its fraudulent transfer claim is not barred by res judicata because the claim was not part of a convenient trial unit. The convenient trial unit is a component of the transactional test for applying res judicata. As PBL and the Law Firms' arguments concerning the identity of claims element of the Trustee's res judicata defense are resolved under the transactional test, we address them together.

As to whether the same claim or cause of action was involved in both suits, the test is not whether the fraudulent transfer claims were ripe and asserted, but rather, whether PBL and the Law Firms seek to re-litigate the same facts, even when they argue a novel legal theory. *Snow Ingredients*, 833 F.3d at 522; *see also Corbett v. MacDonald Moving Servs., Inc.*, 124 F.3d 82, 91

(2nd Cir. 1997) (applying res judicata even though the cause of action was not "ripe"). Whether two suits involve the same claim is decided by applying a "transactional test" that "focuses on whether the two cases under consideration are based upon the same nucleus of operative facts." *Davenport*, 484 F.3d at 326. It is this nucleus of operative facts, "rather than the type of relief requested, substantive theories advanced, or types of rights asserted," that defines the "claim." *Id.*

In the Federal Case, the Law Firms moved for payment out of the funds held in the registry of the court, asserting their rights as superior to all subsequent interests in the settlement, with a lien that extends to the entire settlement fund received, including the entire amount in the registry. PBL's response to that motion sought "an order establishing PBL's place in line immediately behind CHD" and requested distribution of funds. PBL's filings in this state court action call the trust funds "collateral" and assert "[b]ecause [PBL] was a creditor of [Hill] at the time of the transfer, the transfer was fraudulent and void as to [PBL]. The Law Firms similarly allege that the federal court's transfer was fraudulent as to them because they had "a right to payment" out of the Grandchildren's Trusts as "a creditor whose claim arose before the transfer was made."

The Federal Disbursement Order expressly set out to "determine the rights of the various claimants" to the funds, and states in no uncertain terms that (a) the trust funds are "not subject to the [Law Firms'] claims or the claims of any other of [Hill's] creditors" and (b) the Grandchildren's Trusts are the rightful owners of the money the Law Firms and PBL now seek. The Federal Disbursement Order identifies PBL as an "intervener" and "creditor" and unequivocally rejects the Law Firms' arguments that the funds earmarked for the Grandchildren's Trusts are subject to the claims of Hill's creditors, and specifically denies them, and all creditors of Hill, any right to payment out of those funds. Thus, the dispute that was squarely before the federal court was to what extent, if any, Albert G. Hill, Jr.'s installment payments earmarked for the Grandchildren's Trusts were subject to the Law Firms claims or the claims of any other of Hill's creditors. In this

suit, the dispute concerns this same nucleus of facts: who is entitled to the funds that were earmarked for the Grandchildren's Trusts. The Law Firms and PBL cannot now seek a different answer to that question in state court by describing it as a "new legal theory." *See Snow Ingredients*, 833 F.3d at 522; *Corbett*, 124 F.3d at 91.

Moreover, Appellants cannot escape the preclusion bar by alleging that a new factual grouping exists because the actual disbursement of the trust funds came after the Federal Disbursement Order. The Fifth Circuit recently confronted and rejected a similar tactic in *Houston Professional Towing Association v. City of Houston*, where it examined the significance of post-judgment events to res judicata. 812 F.3d 443 (5th Cir. 2016). The prior lawsuit in that case involved preemption and commercial speech challenges to a Houston towing ordinance. *Id.* After trial and a final judgment rejecting those claims, the City of Houston slightly amended the ordinance, prompting the plaintiff to assert the same challenges against the amended ordinance based on a changed "factual predicate." *Id.* at 445-46. Rejecting the plaintiff's assertions, the court held that not every intervening fact will impact the res judicata analysis: "the critical question is not whether *any* facts or law have changed . . . but whether there have been any significant changes." *Id.* at 449 (emphasis in original). Because the "overall purpose" of the towing ordinance did not change, its amendment did not rise to the requisite level of significance, meaning the "nucleus of operative facts remain[ed] the same" between the two suits. *Id.* at 451. The plaintiff's lawsuit was accordingly barred by res judicata. *Id.*; *see also Test Master Educ. Servs., Inc. v. Singh*, 428 F.3d 559, 573–75 (5th Cir. 2005) (citing *Tex. Pig Stands, Inc. v. Hard Rock Café Int'l, Inc.*, 951 F.2d 684, 693 (5th Cir. 1992)).

This case comes to this Court in largely the same posture. No material facts have changed regarding BPL and the Law Firms' right to payment since the federal court issued the Federal Disbursement Order in 2016. All that has happened is the actual disbursement of funds. While

this singular additional event may give PBL and the Law Firms a "new legal theory" through which to seek payment, *see Snow Ingredients*, 833 F.3d at 522, it does not represent a "significant change" to the factual and legal basis undergirding BPL and the Law Firms' claims." *Houston Prof'l Towing*, 812 F.3d at 449. They are creditors of Hill who believe they have a claim to the trust funds. The rationale underlying this suit remains identical to and at the heart of the Federal Case and Federal Disbursement Order—BPL and the Law Firms are creditors of Hill seeking payment out of the funds earmarked for the Grandchildren's Trusts. Their claims are based upon the same nucleus of operative fact as the Federal Case, and BPL and the Law Firms' cause of action for fraudulent transfer are barred by res judicata as a result. *Id.* at 451.

We overrule PBL's first and second issues and the Law Firms' first issue as to the identity of claims element of the Trustee's res judicata claim. We pretermit determining whether appellants' claims are additionally barred by collateral estoppel and whether a material fact issue exists concerning the transfer of funds. TEX. R. APP. P. 47.1

CONCLUSION

We conclude the Trustee met its summary-judgment burden by establishing that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law on its affirmative defense of res judicata. Accordingly, we affirm the trial court's judgment.

/David J. Schenck/
DAVID J. SCHENCK
JUSTICE

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

PBL MULTI-STRATEGY FUND, L.P., CAMPBELL HARRISON & DAGLEY L.L.P., and CALLOWAY NORRIS BURDETTE & WEBER, PLLC, Appellants

No. 05-16-01514-CV V.

FIRST TENNESSEE BANK, AS TRUSTEE OF THE ALBERT G. HILL III 2010 GIFT TRUST F/B/O ALBERT G. HILL, IV THE ALBERT G. HILL III 2010 GIFT TRUST F/B/O NANCE H. HILL, and THE ALBERT G. HILL III 2010 GIFT TRUST F/B/O CAROLINE M. HILL, Appellee

On Appeal from the 101st Judicial District Court, Dallas County, Texas
Trial Court Cause No. DC-16-09627.
Opinion delivered by Justice Schenck.
Justices Lang and Fillmore participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellees FIRST TENNESSEE BANK, AS TRUSTEE OF THE ALBERT G. HILL III 2010 GIFT TRUST F/B/O ALBERT G. HILL, IV THE ALBERT G. HILL III 2010 GIFT TRUST F/B/O NANCE H. HILL, AND THE ALBERT G. HILL III 2010 GIFT TRUST F/B/O CAROLINE M. HILL, ET AL. recover their costs of this appeal from appellants PBL MULTI-STRATEGY FUND, L.P., CAMPBELL HARRISON & DAGLEY L.L.P., and CALLOWY NORRIS BURDETTE & WEBER, PLLC.

Judgment entered this 26th day of April, 2018.