

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

IN RE: BRAHMA INVESTMENT GROUP, INC.	:	APPEAL NO. C-160773 TRIAL NO. 2014002404
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	:	<i>JUDGMENT ENTRY.</i>
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We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

George W. Fels, C.P.A., appeals the judgment of the Hamilton County Probate Court terminating an assignment to Fels by Brahma Investment Group, Inc. (“Brahma”) for the benefit of creditors. We affirm the court’s judgment.

In June 2014, Brahma filed a voluntary Deed of Assignment for the Benefit of Creditors in the probate court, pursuant to R.C. Chapter 1313. Brahma assigned to Fels its interest in real property, a hotel business on that property, and all other assets related to the property and business. The assignment specifically excluded any claim that Brahma had against the city of Norwood, Ohio. Fels accepted the assignment. And the probate court signed and entered a Letter of Authority recognizing the assignment and its exclusion of any claim against Norwood.

A year later, Brahma, along with the co-owner of the property, California Pacific Hospitality, LLC (“CalPac”) and the guarantors of the note, filed a motion to terminate the assignment. At that point, the only creditor to appear in the action was Shinhan

Bank America (“Shinhan”), the first mortgage holder on the property. A sale that had been agreed to by Shinhan and the movants had fallen through. The movants asserted that the assignment no longer served a useful purpose, because Fels could not dispose of the property without CalPac’s consent, the property no longer generated income, and the insurance on the property would soon be cancelled.

Fels then moved for an order determining what assets had been assigned under the assignment. He argued that the Norwood claim should be included in the transferred assets, because the assignor could not properly exclude any asset or property interest from the assignment.

Shinhan moved to terminate the assignment. Shinhan asserted that, as the holder of the first mortgage on the property, it had filed a foreclosure action in the common pleas court and had moved for the appointment of a receiver for the property, and that a continuation of the assignment was procedurally redundant, fiscally inefficient, and detrimental to its interest in the property.

After a receiver was appointed in the foreclosure action, Brahma, CalPac, and the guarantors filed a supplemental motion to terminate the assignment. And Fels moved to examine Brahma as to the disposal of its funds in all accounts at all financial institutions, pursuant to R.C. 1313.20.

In February 2016, the probate court terminated the assignment and overruled Fels’s pending motions as moot. On June 3, 2016, the probate court approved the final report.

In his first assignment of error, Fels argues that the probate court erred by terminating the assignment. Specifically, he contends that an assignment for the benefit of creditors must include all assets, claims, and property of any kind in which the assignor has any interest, and that it may not except or exclude any claims by the assignor. He asserts that terminating the assignment before all of Brahma’s assets were

included in the assignment was contrary to Ohio law. However, he cites no authority for that proposition.

Moreover, Fels accepted the assignment with the claim excluded, as did the probate court. Nothing in R.C. Chapter 1313 requires that all assets be assigned. The trial court did not err by terminating a voluntary partial assignment for the benefit of creditors, where the assignment no longer benefitted the assignor's sole creditor. Accordingly, we overrule the first assignment of error.

In his second assignment of error, Fels argues that the probate court erred by denying his motion to determine the assets set forth in the assignment. He contends, as he argued in his first assignment of error, that all of the assignor's assets must be included in the assignment for the benefit of creditors. We overrule the second assignment of error for the same reasons that we overruled the first assignment of error.

In his third assignment of error, Fels argues that the probate court erred by denying his motion to examine Brahma as to the disposal of the funds in its accounts at all financial institutions. He contends that the court's refusal to allow him to examine Brahma prevented him from recovering any funds that Brahma may have transferred out of its bank accounts after the assignment.

Shinhan, the only creditor who would have benefitted from a recovery of funds, opposed Fels's motion to examine Brahma. The bank noted that a receiver for the property had been appointed, and that the property had been sold through a receiver's sale. The bank argued that, as Brahma's sole creditor, there was no further need for the assignment, when the bank itself could collect any deficiency on the underlying note if it chose to do so.

The probate court did not err by denying Fels's motion to examine Brahma, when the sole creditor opposed the motion, and the motion was rendered moot by the

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termination of the assignment. We overrule the third assignment of error and affirm the judgment of the probate court.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**CUNNINGHAM, P.J., MYERS and MILLER, JJ.**

To the clerk:

Enter upon the journal of the court on August 25, 2017

per order of the court \_\_\_\_\_.  
Presiding Judge