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TRUSTS AND ESTATES UPDATE

Expert Analysis

Receipts and Releases: A Word to the Wise

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Receipts and releases have been used as both a shield and a sword in estate proceedings when fiduciaries are confronted with claims which previously were resolved, or at least, allegedly so. Though instinctively a release is thought to provide an absolute bar to continuing litigation, the factual circumstances surrounding the procurement of the release, as well as the terms of the release itself, often drive the result.

The opinion by the Surrogate's Court, New York County, in *In re Bronner*, NYLJ, Jan. 21, 2016, at p. 32, is instructive. Pending before the court was, *inter alia,* three contested compulsory accounting proceedings in which the respondent/trustee opposed the relief on the grounds that the petitioner/beneficiary had previously executed receipts and releases discharging him from liability. The petitioner moved for summary judgment alleging, in part, that the releases were not fairly obtained from her, due to allegedly inadequate disclosure and an explanation of the transaction by the trustee.

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In denying the motion, and directing that a hearing be held, the court cautioned fiduciaries who seek to avail themselves of the protections afforded by a release, observing that because a transaction between a trustee seeking a release from a beneficiary is, essentially, self-dealing, the law requires that there be proof of full disclosure by the trustee of the facts of the situation and the legal rights of the beneficiary, as well as adequate consideration paid. Moreover, the court noted that the mere absence of misrepresentation, fraud, or undue influence in the procurement of a release will not insulate the instrument from subsequent attack by the beneficiaries. Rather, the fiduciary must affirmatively demonstrate that the beneficiaries were made aware of the nature and legal effect of the transaction in all of its particulars. Within this context, based on the allegations of the petitioner, and the lack of documentary evidence to the contrary, the court found that the petitioner had made a prima facie case that the releases in issue were not obtained fairly, and thus did not necessarily foreclose her right to accountings.

In an attempt to resist summary judgment, the trustee alleged that although an informal account was

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not provided to the petitioner at the time the releases were executed, adequate and full disclosure was made to her by her husband and a trusted friend, who was the asset manager for the real property interests held by the trusts. (Notably, the beneficiary was not represented by counsel at the time she signed the releases.) Additionally, documentary evidence submitted by the trustee suggested that the petitioner was intimately aware of the trust assets, and the transactions underlying the releases.

In view thereof, the court concluded that the trustee's evidence was sufficient to raise genuine questions of fact as to what was known or disclosed to the petitioner. The court opined that while a fiduciary acts at his peril in seeking a general release without an accounting, there is nothing in the law that mandates it as a necessary precondition to its validity. Indeed, nothing forbids a trustee from pursuing a time and cost-effective route of forgoing an accounting if requested and agreed to by informed beneficiaries. Moreover, the court rejected the notion that only the trustee could make the requisite disclosure surrounding the procurement of a release to the beneficiary. Rather, the court held that the appropriateness of a disclosure must be determined in light of the circumstances, with the touchstone being fairness.

Recently, the Surrogate's Court and the Appellate Division had occasion to provide additional instruction on the impact of receipts and releases through the decisions in *In re Salz,* NYLJ, July 27, 2017, at p. 22 (Surrogate's Court, New York County), and *Matter of Lee,* 2017 NY Slip Op 06276 (2d Dep't 2017).

In *Salz,* the Surrogate's Court concluded that the terms of a Receipt, Release and Indemnification Agreement executed by the petitioner barred her claims for an inquiry and turnover, pursuant to SCPA 2103. The proceedings had been instituted against the decedent's surviving spouse, by one of the decedent's sons from a prior marriage, who was a beneficiary under his will. Notably, prior to the decedent's death, his spouse, who was his conservator, was the subject of a contested accounting proceeding, in which the propriety of her stewardship had been questioned by the petitioner and his brother. In pertinent part, they alleged that the decedent's spouse had failed to account for all of the artwork owned by their father. This litigation continued for several years after the decedent's death, at which time it was resolved pursuant to the terms of a "Stipulation of Settlement and Discontinuance," providing, *inter alia,* for the decedent's spouse to be released "individually and in her capacity as Conservator, and in any other capacity … from any and all claims which they now or ever had" upon her payment of a sum certain.

A year later, the co-executors of the decedent's estate, of which the decedent's spouse was one, accounted for their stewardship to the estate beneficiaries and the trustee of the trust created under the decedent's will. In connection therewith, the petitioner and his brother executed a receipt and release agreement that stated that they had examined the executors' account, found it to be complete, and "released and forever discharged the Executors, individually and as executors, from any and all claims and causes of action, liabilities and obligations whatsoever … ."

Several weeks after 'Salz', the Second Department affirmed three decrees of the Surrogate's Court, Nassau County which granted the motions of the Bank of New York Mellon and Merrill Lynch Trust Company to dismiss the petitions for judicial accountings of four separate trusts, two testamentary trusts, and two inter vivos trusts, which had been created by the decedent and his post-deceased spouse.

Ten years later, the petitioner instituted the subject proceedings requesting an inquiry and turnover alleging, inter alia, that artwork was missing from the decedent's estate as a result of fraud and misconduct committed by the decedent's spouse. (In the interim, the decedent's spouse died, resulting in the trustee of the inter vivos trust into which her estate passed on death being made a party to the proceedings.) The respondents moved to dismiss the proceedings, in pertinent part, on the grounds that petitioner's claims had been released. In granting the motion on this basis, as well as others, the court found that during the course of the co-executors' accounting, the petitioner, after having received and examined the account, and while represented by counsel, had released any claims and causes of action he had against the fiduciaries, in their representative capacity and individually. The court held that the broad language of the release, discharging the decedent's spouse from any claim petitioner had or could have, was sufficient to encompass any fraud claims. Further, the court concluded that petitioner's pleadings failed to identify a separate fraud from the subject matter of the release that could serve as a basis for a claim that the execution of the release was induced by fraud.

Several weeks after the opinion in *Salz,* the Second Department affirmed three decrees of the Surrogate's Court, Nassau County (McCarty III, S.) which granted the motions of the Bank of New York Mellon (BNY) and Merrill Lynch Trust Company (Merrill Lynch) to dismiss the petitions for judicial accountings of four separate trusts, two testamentary trusts, and two inter vivos trusts, which had been created by the decedent and his post-deceased spouse. The petitioners were beneficiaries of each of the trusts. Initially, BNY served as co-trustee of the trusts until it resigned and was succeeded by Merrill Lynch. Upon its resignation, the petitioners each executed a release in favor of BNY regarding its management of the trusts. Following the death of the decedents' son, and the succession by Merrill Lynch as trustee, all four trusts terminated, whereupon the petitioners each executed releases in favor of Merrill Lynch releasing it from any claims based upon its management of the trusts.

Approximately four years later, the petitioners instituted proceedings to compel BNY and Merrill Lynch to account with respect to each of the trusts. Motions to dismiss by the respondents were granted, and the petitioners appealed. Significantly, the Appellate Division held that the Surrogate's Court should not have dismissed the petitions against BNY on the basis that the claims asserted were barred by the releases, inasmuch as BNY failed to affirmatively demonstrate that all of the petitioners, who were not represented by counsel when the instruments were signed, were fully aware of the nature and legal effect of the releases at that time. Nevertheless, the court held that the Surrogate's Court had properly found that the claims against BNY for an accounting were time-barred, inasmuch as the claims for an accounting accrued when Merrill Lynch succeeded BNY as trustee in 2001 and 2002. Further, the court held that the Surrogate's Court had properly concluded that the claims against BNY were not tolled by fraud, and that the doctrine of equitable estoppel did not apply.

With respect to Merrill Lynch, the court held that the Surrogate's Court had properly determined that the releases executed by the petitioners were valid, inasmuch as upon executing the instruments the petitioners confirmed receipt of an informal accounting, and discharged Merrill Lynch from all liability and any claim for a formal accounting upon the advice of counsel and after negotiations.