

Trusts & Estates

Expert Analysis

Repeat Performance: More Insights on Receipts and Releases

Recent months have been witness to multiple opinions addressed to receipts and releases. Three of these opinions, *In re Ingraham* and *In re Salz*, both decided by the New York County Surrogate's Court, and *Matter of Lee*, decided by the Appellate Division, Second Department, were examined in my August and October columns, respectively. This month's article continues with that theme, as well as takes a look at what also is a recurring theme—the withdrawal of a waiver and consent to probate.

Receipts and Releases—Surrogate's Court and Appellate Division Continue to Provide Insight.

Before the Surrogate's Court, Bronx County, in *In re Cozza*, N.Y.L.J., July 21, 2017, at p. 25, was

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a motion for summary judgment by the executor of the estate, one of the decedent's daughters, dismissing a compulsory accounting proceeding instituted by another

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daughter of the decedent, who was an estate beneficiary.

Notably, the documentary evidence submitted by the executor in support of her motion indicated that the petitioner had executed a receipt, release, waiver and

refunding agreement after receiving an informal account prepared by the accountant for the estate. The informal account was supported by annotated schedules, and an acknowledgment by the petitioner that prior to signing the receipt and release she had been given the opportunity to consult an attorney and seek the advice of her own accountant, and to review and ask questions about the informal account. Additionally, in the same document, the petitioner consented to the settlement of the executor's account and the entry of a decree judicially settling same without further notice to her.

In opposition to the motion, the petitioner claimed that she was caused to sign the release because she was in need of her inheritance. Nevertheless, she acknowledged that she contacted the attorney and accountant for the estate prior to signing the document. Moreover, it appeared

that she had been represented by her own counsel, albeit for a brief period of time.

Based on the record, the court found that the petitioner was provided with detailed information regarding the informal account, and had the benefit of her own counsel in advance of signing the receipt, release, waiver and refunding agreement. Thus, it concluded that the petitioner had freely signed the document after being given the opportunity to consult professionals of her own choosing. Moreover, the court, in its discretion, held that it would not be in the best interest of the estate, given its small size, to require the executor to undertake the expense of a formal accounting proceeding. Accordingly, the executor's motion for summary judgment was granted.

In addition to the Surrogate's Courts, the Appellate Division has also had more than one recent occasion to examine the validity of a receipt and release. Several months after its opinion in *Matter of Lee*, the Appellate Division, Second Department, considered the issue in *Matter of Spacek*, 2017 NY Slip Op 07737. Before the court was an appeal by a beneficiary of the decedent's estate from an Order of the Surrogate's Court, Nassau County (McCarty III, S.), which denied her motion to set aside a

release she had signed discharging the executor.

The record revealed that the decedent's Will had directed that his residuary estate be divided equally among six specified persons, including the executor and the appellant. Subsequent to the admission of the Will to probate and the issuance of letters testamentary, the executor, through her attorney, sent an agreement, in lieu of a formal accounting and judicial settlement, to the estate beneficiaries. The agreement, amongst other things, released the executor from any claims relating to her acts as fiduciary. The estate's tax return and other financial documents were annexed to the agreement. Though the agreement was not signed by all of the estate beneficiaries, the

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appellant signed the document containing the release.

Thereafter, when the executor petitioned for the judicial settlement of her account, the appellant filed objections, and sought to set aside her release, claiming that she was not aware that the executor was the recipient of several joint

bank accounts that had been established by the decedent, and thus, was going to ultimately receive a larger share of the estate assets than the other residuary beneficiaries. The Surrogate's Court denied the motion and the objectant appealed.

In affirming the Order of the Surrogate's Court, the Appellate Division opined that while formal accountings of an estate are generally done in the context of a judicial proceeding, a fiduciary may also account informally and thereby obtain receipts and releases from all interested parties (citing *Matter of Lifgren*, 36 A.D.3d 1042, 1044 (3d Dep't 2007), quoting *Matter of Hunter*, 4 N.Y.3d at 267, n.3 (2005)). "Such an informal accounting is as effectual for all purposes as a settlement pursuant to a judicial decree." *Id.* To that extent, if a fiduciary renders an informal accounting to the estate beneficiaries, and provides them with full disclosure, the beneficiaries must either object to the account and refuse an informal discharge of the fiduciary at that time, or be barred from doing so at a later date. On the other hand, where the validity of a release is challenged, "a fiduciary must affirmatively demonstrate that the beneficiaries were made aware of the nature and legal effect of the transaction in all of its particulars" (citing *Matter of Lifgren*, *id.*, quoting

Birnbaum v. Birnbaum, 117 A.D.2d 409, 416 (4th Dep't 1986)).

Within this context, the court found that the documents provided by the executor to the appellant, along with the release, made the beneficiaries aware of all the distributions that would be made from the estate. Moreover, the court noted that the tax return, which was included in the documentation, revealed that the executor would receive a greater share of the estate as a result of the subject bank accounts she held jointly with the decedent.

Accordingly, based upon the foregoing, the court concluded that the Surrogate's Court correctly denied the appellant's motion to set aside the release.

Motion to Set Aside Waiver and Consent Denied. In *In re Weiss*, N.Y.L.J., July 13, 2017, at 22 (Sur. Ct., New York County), the Surrogate's Court, New York County, was confronted with a motion by a paternal first cousin of the decedent to set aside his waiver and consent to probate. The record revealed that the decedent died with a Will that left his entire estate to a non-relative. His sole surviving heirs were two paternal first cousins, one of whom had signed the subject waiver and consent. The waiver form was sent to the movant by petitioner's counsel

accompanied by a copy of the propounded instrument. Though he signed the document, he subsequently claimed that he did so without the advice of independent counsel, and without understanding its legal ramifications. He further claimed that had he known that he would be barred from conducting pretrial discovery upon executing the waiver, he never would have done so.

The court observed that a party seeking to set aside a waiver and consent must make a showing of good cause, that is, circumstances such as fraud, collusion, mistake or accident. Additionally, a party seeking such relief must demonstrate a reasonable probability of success on the merits, and that the parties can be returned to the status quo. Nevertheless, where a probate decree has not yet issued, a more relaxed standard may apply in order to avoid injustice. (citing *Matter of Frutiger*, 29 NY2d 143, 150 (1971); *In re Morse*, NYLJ, May 19, 1998, at 25, col. 5 (Sur. Ct. New York County).

The court held that the fact that the movant did not seek legal guidance before signing the waiver did not, by itself, warrant setting it aside. Indeed, the court noted that a party is charged with knowledge of the contents of a waiver as well as its legal effects, and thus, a failure to understand or appreciate

the significance of a waiver does not constitute sufficient cause to permit its withdrawal. Importantly, however, the record revealed that while proponent's counsel had no obligation to explain the waiver to the movant, he nevertheless included a letter to the movant, with the waiver form, clearly explaining its legal ramifications. Further, the court observed that the movant did not allege that he was suffering from a legal disability at the time the waiver was signed, or that it had been procured by fraud or misrepresentation.

Finally, despite allegations by the movant that, inter alia, a lawyer was not present when the Will was executed, that the identity of the draftsman was unknown, that the decedent suffered from physical and mental impairments, as evidenced by his squalid living conditions, and that the decedent may have been unduly influenced by the sole beneficiary, the court concluded that these claims failed to demonstrate that the movant had potentially meritorious grounds for objecting to probate.

Accordingly, the court held that sufficient grounds had not been established to set aside the waiver, and the motion was denied.